ARMS TRANSFERS TO THE SYRIAN ARAB REPUBLIC

PRACTICE AND LEGALITY

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But we can hardly be satisfied with destroying chemical weapons while the wider war is still destroying whole Syria. The vast majority of the killings and atrocities have been carried out with the conventional weapons. I appeal to all States to stop fuelling bloodshed and to end arms flows to all the parties.

Address to the UN General Assembly by Secretary-General Ban Ki-moon,
24 September 2013
Early in 2011 Syria fell under the spell of the Arab Revolution. In February and March 2011, the Syrian people stepped into the streets and claimed more political, social and economic rights. The Syrian regime announced several political and legal reforms, but part of the population experienced them as unsatisfactory. The demonstrations became more vicious and the regime of President Bashar Hafez al-Assad broke up the crowds with military action. The State’s suppression of dissent was followed by defections and the formation of armed opposition groups. Violence soon escalated and transformed into a still-ongoing civil war, in which the parties’ conduct has become increasingly radicalized and militarized, at the expense of both the Syrian people and both regional and international peace and security.

Recent figures are revelatory of the growing cycle of violence: according to reports released in September 2013 over 110,000 people have been killed; many thousands have been wounded during the armed hostilities; there are more than 2.4 million refugees; 4 million have been displaced internally (IDPs); and more than one-third of Syrians urgently need humanitarian aid. Economic conditions in Syria are deteriorating and the Syrian currency is severely depreciated. Furthermore, most basic infrastructure including schools, hospitals, power and water utilities and houses have been, and still are being, destroyed. Both government and non-governmental forces are regularly blamed for perpetrating war crimes, crimes against humanity, and gross violations of international human rights and humanitarian law. Therefore, many States and

1. This revolution is commonly referred to as the ‘Arab Spring’; yet the term ‘revolution’ is preferred because it is more neutral than ‘spring’.
5. In July 2012, the ICRC for the first time labeled the Syrian conflict as a ‘non-international armed conflict’. In August 2012, the UN Commission of Inquiry reported that during the reporting period (February 2012-August 2012) ‘the intensity and duration of the conflict, combined with the increased organizational capabilities of anti-Government armed groups, had met the legal threshold of a non-international armed conflict’. See also BBC (2012), ‘Syria in civil war, Red Cross says’, 15 July 2012; Aljazeera (2012), ‘Red Cross declares Syria conflict a civil war’, 16 July 2012.
9. Ibid; See also WFP, ‘Syria overview’, last consulted on 31 October 2013.
12. For Section 2.4.
civil society groups urge for the immediate reference of the Syrian situation to the International Criminal Court (ICC) and for the Security Council to adopt effective measures.

Since the chemical attack in the Ghouta area on 21 August 2013, which killed an estimated 1,400 men, women and children, high level diplomatic negotiations have resumed. But still, the prospects for peace and stability on the ground seem remote. While the immediate threat of an international military intervention has been lifted, the fighting between the forces of Assad and the rebel groups, as well as the combats between the dozens of armed opposition groups, continues unabated. It is estimated that several thousands of Syrians have been killed by conventional weapons since the Ghouta chemical attack.

After more than two years of internal conflict in Syria, a pressing question relates to the legality of arms transfers to both the groups opposing the regime of Assad and the Assad regime itself. Since the beginning of the conflict, regional and international players are arming one side or the other, which brought the UN Secretary-General to qualify the conflict as a ‘proxy war’. The latest report of the UN Independent International Commission of Inquiry on the Syrian Arab Republic (hereafter: UN Commission of Inquiry) unambiguously observed that ‘more regional actors were sponsoring flows of fighters and equipment, increasingly along sectarian lines, leading to a rise in corresponding violence’. In light of the lift of the EU arms embargo earlier this year, and the growing tensions at the regional and international level on the Syria question, there is no likelihood of decreasing arms transfers in the near future, which triggers the discussion on the permissibility of such arms transfers.

Therefore, this research paper outlines the normative and practical framework which governs arms transfers to the myriad of actors involved in the Syrian armed conflict. The practical analysis concentrates on past and present arms transfers to Syria and the risks of proliferation of these arms in Syria and beyond. This examination is based on official reports of the UN and EU, a wide variety of media sources, contacts with experts, writings of legal and political scholars and reports from governments and non-governmental sources. The legal analysis focuses on the most important international and European legal standards governing the transfer of military material and technology, as well as the international treaty and customary law rules regulating the threat or use of force in international relations. The main purpose of this report is to offer an in-depth legal and factual analysis on arms transfers to Syria.

This report is structured as follows: Hereafter, Section 2 focuses on the internal actors involved in the Syrian conflict. It analyses the various components, internal structure, territorial control and conduct of both State and non-State actors in Syria. Section 3 examines the various international responses to the situation in Syria. More


particularly, it analyses the condemnations, sanctions and arms embargoes imposed by influential international and regional actors, as well as the status attributed by the UN, regional organizations and different single States to the different parties involved in the conflict. Section 4 offers a panorama of the conventional and non-conventional weapons used in Syria and Section 5 gives a detailed overview of the most important arms transfers to both the Syrian State armed forces and opposition groups. Section 6 analyses the legality of arms transfers to Syria, taking into account all the elements revealed in Sections 1 to 5. Finally, Section 7 concludes with summary observations and assesses the legitimacy of arms transfers to Syria.

This report was completed on 1 November 2013.
2. THE INTERNAL ACTORS INVOLVED IN THE SYRIAN CONFLICT

The dynamics of the conflict have become increasingly complex. The war has become coloured by sectarianism, permeated by opportunistic criminality and aggravated by the presence of foreign fighters and extremist groups.18

The actors fighting for territorial and political control in Syria are numerous and diverse. The current discussion on the permissibility of arms transfers to Syria requires an analysis and understanding of the myriad of actors which do, or may, benefit from arms transfers. This is because the structure, territorial control and conduct of both State and non-State armed groups are factors that should be taken into account in all decisions relating to the advisability and legality of providing support – *a fortiori* lethal support – to armed entities abroad. This section examines, firstly, the *structure and organization* of the government armed forces and the most influential armed opposition groups. This part also briefly looks at the support both sides involved in the conflict receive from foreign fighters. Secondly, this section also assesses the *territorial control* of the different parties to the conflict. Lastly, this section concludes with an overview of the documented violations of human rights law and humanitarian law perpetrated by the different actors.

This overview of the different facets of the internal actors involved in the Syrian conflict is first and foremost based on UN reports, with particular attention for the reports of the UN Commission of Inquiry, which was tasked, amongst others, ‘to establish the facts and circumstances that may amount to such [i.e. human rights] violations and of the crimes perpetrated and, where possible, to identify those responsible’.19 In view of the independence and high-quality of the members of the UN Commission of Inquiry, the UN Commission of Inquiry reports are a valuable and important source of information. The data thus obtained have been verified with, and complemented by, an open source analysis of press articles and reports of NGOs, Think Tanks and independent academics.

2.1. The State Armed Forces

The Syrian State forces include (1) the Syrian Armed Forces, (2) the Security and Intelligence Forces, and (3) the *Shabbiha* and *People’s Army* militia, affiliated with the Syrian Government.20 The core of the command structure of the State’s armed and security forces are formed by Alawites, a Muslim minority group that accounts for around 12 per cent of Syria’s population and to which the Assad family belongs.21 All army divi-

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19. For the mandate, features and composition of the UN Report Commission of Inquiry, see [ohchr website](https://www.ohchr.org/EN/HRBodies/HRC/Pages/UnCommissionofInquirySyria.aspx).
sions, all security services, and all militias of the State have been engaged in military operations during the conflict.\textsuperscript{22}

While State armed forces remain fully operational and very powerful, there have been numerous casualties, defections and desertions, especially during the first two years of the civil war.\textsuperscript{23} While in early 2011 the Syrian State armed forces still numbered around 300,000,\textsuperscript{24} in a 2013 study the International Institute for Strategic Studies estimated that ‘[t]he nominal pre-war strength of the army has likely been reduced by half’.\textsuperscript{25} In addition to the continuous reduction of staff, the Syrian armed forces have also experienced significant losses of armour, combat aircraft and helicopters.\textsuperscript{26} This section briefly analyses the composition and structure of the Syrian State forces:

1. The Syrian Armed Forces comprise the Army, the Navy and the Air Force. The Syrian Armed Forces are organized into twelve divisions: seven armoured, three mechanized, one Republican Guard and the Special forces.\textsuperscript{27} The Syrian Elite units, which are responsible for countering any threat from dissident military forces, include both the Republican Guard (originally 10,000-man) and the Fourth Division (originally 20,000-man).\textsuperscript{28} The Army in particular has been affected by the civil war; at present most formations are understrength and several have been disbanded.\textsuperscript{29} The Syrian President is the supreme commander of the Syrian Armed Forces.\textsuperscript{30}

2. The Syrian Security Apparatus is composed of a multitude of security forces and intelligence agencies. More precisely, it has four security directorates: Military Intelligence, Air Force Intelligence, State Security, and Political Security.\textsuperscript{31} The Syrian security apparatus has been known for playing ‘a powerful role in Syrian society’ and being ‘large and effective’.\textsuperscript{32} While it is difficult to estimate the actual strength of the security apparatus, there is no doubt that it has greatly complemented the army during the civil war.\textsuperscript{33}

\textsuperscript{22} UN Report Commission of Inquiry, A/HRC/21/50, 16 August 2012, §§22 and 24.


\textsuperscript{25} IISS (2013), The Military Balance 2013, at p.403. For the year 2010, the Military Balance evaluated the strength of the army as follows: Active 295,000 (Army 220,000; Navy 5,000; Air 30,000; Air Defence 40,000) and Paramilitary 108,000. For the year 2011, the Military Balance evaluated the strength of the army as follows: Active 295,000 (Army 220,000; Navy 5,000; Air 30,000; Air Defence 40,000) and Paramilitary 108,000. For the year 2012, The Military Balance evaluated the strength of the army as follows: Active 178,000 (Army 110,000; Navy 5,000; Air 27,000; Air Defence 36,000) and Paramilitary not known. This discloses that it is especially the Army that suffered defections, casualties and desertions.

\textsuperscript{26} IISS (2013), The Military Balance 2013, at p.403.


\textsuperscript{28} UN Report Commission of Inquiry, A/HRC/S-17/2/Add.1, 23 November 2011, §18. According to the IISS, ‘[t]he most capable and most reliable of those remaining are mainly Alawite Special Forces, the Republican Guard, and the elite 3\textsuperscript{rd} and 4\textsuperscript{th} divisions: perhaps 50,000 troops in total’. See IISS (2013), The Military Balance 2013, at p.403.

\textsuperscript{29} IISS (2013), The Military Balance 2013, at p.403.

\textsuperscript{30} Article 105 of the Constitution of the Syrian Arab Republic 2012.


\textsuperscript{32} UN Report Commission of Inquiry, A/HRC/S-17/2/Add.1, 23 November 2011, §19.

\textsuperscript{33} IISS (2013), The Military Balance 2013, at p.403.
3. The State Militia includes the Shabbiha\textsuperscript{34} and the People’s Army.\textsuperscript{35} While in 2011, Syrian paramilitary forces were estimated at some 100,000, the present number of paramilitary group members is unknown.\textsuperscript{36} State Militia is actively involved in the Syrian conflict and have been identified as the perpetrator of many abuses (see below). While the internal organization and chain of command of the militias remains unclear,\textsuperscript{37} they are, at least partly, armed by the government. State Militias have generally acted in concert with, or with the acquiescence of, government forces.\textsuperscript{38} However, according to a number of sources, Assad is losing control over its militias. According to a Syrian regime official, ‘[t]he longer the war goes on, the more difficult it will be for Assad to control his own paramilitary forces’.\textsuperscript{39}

4. Even though they cannot be qualified as either a de jure or de facto organ of the State, during the civil war many pro-government communities have formed armed self-defence groups, also known as popular committees.\textsuperscript{40} The raison d’être of these self-defence groups is to protect their neighbourhoods and localities from anti-government armed forces.\textsuperscript{41} Typically, these neighbourhood watches establish checkpoints and conduct night patrols.\textsuperscript{42} They are reportedly equipped and armed by either the government or external sympathisers.\textsuperscript{43} The Syrian government has gradually more relied on these armed groups, which have been involved in extrajudicial killings and other abuses (see Section 2.4).\textsuperscript{44}

In view of the numerous defections and casualties, the regime of Assad has increasingly relied on armed militia (3) and self-defence groups (4), and has sought to reinforce their cohesion by organizing them better.\textsuperscript{45} To this end, hundreds of popular committees and militias were merged into a new paramilitary force in 2012, which became known as the National Defence Army.\textsuperscript{46}

5. Lastly, foreign militias and fighters, primarily from Lebanon, Iran and Iraq, have joined the Syrian State armed forces. While some – such as the Iranian Revolutionary Guard – operate under the instructions of foreign governments, other armed fighters – such as those belonging to Iraq’s Asaib Ahl al-Haq – cannot necessarily be identified as being associated with a third State government. The latest report of the UN Commission of Inquiry observed that ‘government forces benefited from wide logistical support and personnel provided by allies, including the deployment of military advisers.’ This significant involvement of foreign forces, in particular the Lebanese Hezbollah and Iranian Revolutionary Guard, in certain strategic areas revitalized the Syrian army at a crucial point in the fighting, when armed opposition had gained steady ground against the State armed forces. To illustrate, in May 2013 the Hezbollah military presence reached a peak; reportedly there were 1,200 Hezbollah military personnel involved in a ground assault of the Syrian armed forces in the town of Al Qusayr. And in June 2013, several sources reported that Iran had sent 4,000 troops to Syria in order to aid the forces of Assad.

2.2. The Opposition Groups: Myriad of Actors

The Syrian opposition is deeply divided, fractured, and diverse, and includes numerous armed groups. In fact, the ‘Syrian opposition’ is no more than an umbrella term for groups calling for the fall of the Assad regime; today, this call is mostly the only element binding all rebel groups. Still, as will be developed below, several armed groups have tried to form coalitions to unite opposition forces and increase the opposition’s credibility both inside and outside Syria. As over time the Syrian opposition received greater external support, it has become increasingly capable of militarily engaging with the government armed forces. This section gives an overview of both the political and armed opposition in Syria, and offers a rough panorama of the most influential armed opposition groups.

1. The National Coalition for Syrian Revolutionary and Opposition Forces (National Coalition) is an opposition umbrella group that was created at a conference of opposition groups held in Qatar in November 2012. At this conference, various groups from the Syrian political opposition decided to unify in order to gain more legitimacy and obtain substantive international political, logistic, financial and military support. The stated objectives of the National Coalition are ousting the Assad regime and dismantling the security services; unifying and supporting the Free Syrian Army; holding accountable all groups and individuals responsible for the atrocities in Syria;

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47. In this regard, see also UNHRC Res. 23/26, A/HRC/RES/23/26, 25 June 2013, 55 and 10.
51. Charles Lister in an interview on Jane’s website, 3 July 2013.
52. The Independent (2013), ‘Iran to send 4,000 troops to aid President Assad forces in Syria’, 16 June 2013.
and rejecting dialogue or negotiation with the criminal regime.\textsuperscript{55} The National Coalition also emphasized in a Facebook-message that ‘it plays an important role in liaising between the needs of the Syrian people and the international community.’\textsuperscript{56}

The National Coalition is made up of representatives of external Syrian opposition groups and internal revolutionary forces and receives support from the Free Syrian Army, the Syrian National Council and the Supreme Joint Military Command Council (\textit{see} below).\textsuperscript{57} Yet, other opposition groups have criticised the National Coalition and have sometimes rejected its legitimacy.\textsuperscript{58} At the international level, the National Coalition has received wide international support (\textit{see} Section 3.2) and functions as the main political interlocutor with the international community today. Several States have recognized the National Coalition as the legitimate representative of the Syrian people.\textsuperscript{59} However, the other side of the picture is that – reflective of the different opposition movements it assembles – the National Coalition has been plagued by internal divisions since its inception.\textsuperscript{60} These internal frictions, fuelled by the struggle for influence over the Syrian opposition between Saudi Arabia and Qatar, has greatly contributed to the National Coalition’s inability to assert overall command over the Syrian armed opposition.\textsuperscript{61}

2. The Syrian National Council (SNC) was formed in August 2011. It was the first significant coalition of Syrian opposition groups – created in order to offer a credible alternative to the regime of Assad.\textsuperscript{62} Before the creation of the National Coalition, of which the SNC is now part, the SNC was the main political interlocutor with the international community.\textsuperscript{63} The SNC is a political opposition group,\textsuperscript{64} but it has strong connections with the Free Syrian Army, which is the main armed opposition group in Syria. The SNC comprises a diverse set of members, ranging from the Muslim

\textsuperscript{55} Local Coordination Committees (2012), The National Coalition of Syrian Revolutionary and Opposition Forces, 12 November 2012; last consulted on 1 November 2013.
\textsuperscript{56} Ibid; see also UN Report Commission of Inquiry, A/HRC/22/59, 5 February 2013, §14.
\textsuperscript{57} Ibid. See also UN Report Commission of Inquiry, A/HRC/22/59, 5 February 2013, §14.
\textsuperscript{58} See for example Statement Issued by the Revolutionary Movement in Syria, 29 May 2013, last consulted on 1 November 2013; UN Report Commission of Inquiry, A/HRC/22/59, 5 February 2013, §14.
\textsuperscript{60} The National Coalition’s first president, Moaz al-Khatib, resigned in April 2013, in protest of the lack of international support to the Syrian opposition and because multiple actors were trying to hijack the Syrian revolution to advance their own interests (See The Guardian (2013), Moaz al-Khatib’s resignation plunges Syrian opposition into chaos, 24 March 2013; New York Times (2013), Syrian Opposition Leader Quits His Post, 24 March 2013). It is commonly accepted, however, that the election a few days earlier of Ghassan Hitto as Prime Minister of the interim government formed by the National Coalition was an important trigger for al-Khatib’s departure as well (See New York Times (2013), Syrian Rebels Pick U.S. Citizen to Lead Interim Government, 18 March 2013; The Guardian (2013), Syrian rebels elect prime minister, 19 March 2013). Until the election of Ahmed Jarba in July 2013, George Sabra served as acting president of the National Coalition (See Al Jazeera (2013), Main Syrian opposition elects new president, 6 July 2013; RFI (2013), Syrian: Ahmad Ass Jarba, nouveau president de la Coalition nationale syrienne, 6 July 2013). In July 2013, the first interim Prime Minister Hitto resigned as well, reportedly because he had been unable to form a cabinet, and because Saudi Arabia – a principal backer of the Syrian opposition coalition – had uttered its discontent with Hitto (See New York Times (2013), Another Leader Quits Post in Syrian Exile Group, 8 July 2013; New York Times (2013), Syrian opposition group elects new prime minister, 14 September 2013). Finally, in September 2013, the National Coalition elected Ahmad Temej as the opposition’s new transitional prime minister, hoping that this would both improve the Coalition’s standing inside Syria and attract greater international support (see New York Times (2013), Syrian Opposition Group Elects New Prime Minister, 14 September 2013).
\textsuperscript{61} BBC News (2013), Guide to the Syrian opposition.
\textsuperscript{62} Ibid.
\textsuperscript{63} See for example EU Observer (2012), France recognises Syrian council, proposes military intervention, 24 November 2011; RFI (2012), Syrian National Council a legitimate interlocutor, says France, 24 February 2012; Al Arabiya (2012), Friends of Syria recognize SNC as legitimate representative of Syria, 1 April 2012.
\textsuperscript{64} The SNC is thus unarmed, but it has close relations with the Free Syrian Army (\textit{see} below).
Brotherhood to secular formations and representatives of local committees. The SNC leadership largely resides abroad, and it is currently headed by Georges Sabra. It must be stressed that just like the National Coalition – the Council has had internal frictions since its creation. Also, its legitimacy has been contested by other parts of the opposition. Criticisms often voiced include: the SNC’s failure to equip the armed groups on the ground; its inadequacy to mobilize global effective support for the opposition; its poor efforts to provide humanitarian and relief efforts to the Syrian people; and its lack of transparency. Due to its decreasing popularity and being under increased international pressure, the SNC unified with other opposition groups in November 2012 in order to form a broad, new and more effective National Coalition (see above).

3. The main armed opposition group is the Free Syrian Army (FSA). It was set up by the military defector Colonel Riad Assad and is composed predominantly of armed civilians and army defectors. The FSA on the one hand and the SNC/National Coalition on the other are two separate entities and mainly operate independently, but their respective leaderships have also cooperated and coordinated actions. Even though the FSA assembles many armed groups that are actively engaged in the Syrian conflict, the level of control and command of the FSA leadership over the different FSA groups remains limited. In fact, while some groups expressly recognize the FSA leadership, other so-called ‘FSA groups’ seemingly only adopt the name to underline their revolutionary aspirations. Many reports have stressed this absence of a functioning chain of command within the FSA as well as the lack of control over, and effective accountability mechanisms for, the different factions operating under the FSA umbrella. One report unambiguously noted that the armed factions’ widespread use of the FSA brand gave the impression of a unified movement, but no nationwide FSA structure was ever created to match the name.

68. Al Arabiya (2012), Syrian army overruns Idlib as leading figures quit rebel council citing ‘chaos’; 14 March 2012.
In December 2012, there was an ambitious attempt to set up a more efficient FSA leadership, which resulted in the creation of the Supreme Joint Military Command Council (SJMCC), also referred to as the Supreme Military Command (SMC). Since that date, FSA and SJMCC/SMC are used interchangeably. The principal task of the SJMCC, led by General Salim Idris, was to unify all opposition fighting forces under one single command at the national level. The SJMCC, while it ‘improves upon previous attempts at armed opposition unification’, has not become the effective institution international and national policy makers had hoped for. In June 2013, the UN Commission of Inquiry observed that the SJMCC ‘failed to centralise different sources of logistical support, integrate command networks and alleviate the influence of radical groups’. Indeed, the SJMCC does not function as a conventional military organization since ‘member groups retain their separate identities and operation autonomy and proclaim loyalty to their own commanders’.

On the other hand, it is recognized that the SJMCC facilitates the coordination between all its member groups and functions as a ‘unified distribution channel for military supplies and funds’. In April 2013, Gulf States declared that they would link the supply of weapons to allegiance to the FSA/SJMCC. This conditional supply system, which aims at preventing arms from falling into the hands of radical groups such as Al-Nusra, has reportedly also been applied by western States such as France, the United Kingdom and the United States. As a result, many rebel groups in Syria – eager to be adequately equipped – have aligned with the FSA/SJMCC. Practically, according to Reuters, the commanders of the various armed groups which pledge allegiance to the FSA/SJMCC just submit a list of the weapons and ammunition needed to Military Command Council which, in turn, forwards the request to the backing States, in particular Saudi Arabia and Qatar. Once the weapons are delivered to the FSA/SJMCC, they are dispatched to the different armed units in Syria. All in all, the influence of the FSA/SJMCC – after it had trended downwards during the second half of 2012 – has increased again 2013.

4. In the current context, it is also important to stress the presence of other non-State armed groups, which are not affiliated to the main political and armed opposition movements discussed above. These so called independent military alliances mostly

83. A. Lund (2013), Op.cit. See also Reuters (2013), ‘Qatar, allies tighten coordination of arms flows to Syria’, 14 May 2013. The reported number of fighters that operate under FSA/SJMCC umbrella differs from source to source; whereas some speak of about 80,000 fighter, others claim that there are over 300,000 in FSA members groups. In this regard, see A. Lund (2013), Op.cit.
regroup armed movements in a specific area and they all have a common goal, i.e. the collapse of the actual regime.\textsuperscript{87} Independent military alliances range from moderate to extremist groups\textsuperscript{88} and some have on several occasions cooperated operationally with the FSA/ SJMCC.\textsuperscript{89} Radical and extremist armed groups on Syrian territory have become more and more visible and influential. Most renowned radical armed groups are the Jabhat Al-Nusra Front for the People of the Levant (Al-Nusra)\textsuperscript{90} and the Islamic State of Iraq and Syria (ISIS), but there are dozens of other hard-line Salafi factions. However, the precise number of radical and extremist armed groups in Syria is highly contested.\textsuperscript{91} The UN Commission of Inquiry has reported in that ‘the discipline and operational abilities of radical fighters, combined with better access to reliable sponsors, allowed them to outmatch the fractious moderate groups’.\textsuperscript{92} Many individuals fighting for extremist groups have come from abroad; not all of them have Syrian nationality (see ‘Foreign fighters’). Radical groups have predominantly been funded and armed by private donors, not by Gulf States.\textsuperscript{93}

5. Foreign fighters have increasingly reinforced rebels’ ranks.\textsuperscript{94} For the most part, they come from States in the Middle East, North Africa and Central Asia, but there are also several credible accounts of European and American young men joining armed opposition in Syria.\textsuperscript{95} Even though their number is hard to assess,\textsuperscript{96} foreign fighters ‘have

\begin{itemize}
\item 600 fighters had
\item Most cited countries home to the foreign fighters are Libya, Tunisia, Saudi Arabia, Lebanon, Iraq and Egypt.
\item In July 2013 about 600 fighters had
\item and some have on several occasions cooperated operationally with the FSA/ SJMCC.
\item Radical and extremist armed groups
\item with the Islamic State of Iraq and Syria (ISIS), but there are dozens of other hard-line Salafi factions.
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\item For the most part, they come from States in the Middle East, North Africa and Central Asia, but there are also several credible accounts of European and American young men joining armed opposition in Syria. Even though their number is hard to assess, foreign fighters ‘have
\end{itemize}
integrated armed groups all over the country’ and ‘contributed to the radicalisation of anti-Government insurgents’.  

6. Finally **Kurdish armed groups** add to the complex cartography of Syrian armed groups. Kurds comprise about 10 per cent of Syria’s population, and they are concentrated in the northwest of Syria, in parts of Damascus and in the north-eastern oil-producing area of Qamishli. The main Kurdish militia has been engaged in clashes with both government and anti-government forces over control of Kurdish areas in northern and north-eastern Syria. In fact, the Kurds have, albeit without success, tried to stay out of the civil war, and they have refused to align officially with either the Assad regime or the opposition.

Before turning to the next issue of the actual territorial control of the different parties to the armed conflict, it seems appropriate to make two short comments: First, it must be emphasized that the disintegration, radicalization and fragmentation of both the political and armed opposition has worsened, amongst others because of the **interference of third actors**. According to the UN Commission of Inquiry, the ‘fragmentation was aggravated by – if not the result of – the fact that the financial and material external support delivered by different sponsors, instead of promoting integration, has generated divisions and exacerbated competition among different groups’. In the same report, it is also observed that ‘the intervention of external sponsors has contributed to the radicalization of the insurgency as it has favoured Salafi armed groups such as the Al-Nusra Front, and even encouraged mainstream insurgents to join them owing to their superior logistical and operational capabilities’.

The **intensification of the conflict, which has become lawless, is often directly linked; first, with the increased involvement of both foreign fighters and extremist groups, but also with the arms transfers from third States to Syria** (see Section 5). Second, all these disparate opposition groups are increasingly involved into a **power struggle** amongst themselves, which has resulted in heavy clashes. Several powerful armed opposition groups actively oppose the umbrella FSA/SJMCC and areas which are nominally under the control of armed opposition groups are often characterized by fierce rebel fighting in the course of the war. This **persistent division has substantially limited the operation capacity of the armed opposition**, which has lost

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104. Ibid. §26.
105. Ibid. §134.
control over certain strategic areas regained by the government forces.\textsuperscript{109} Worse still, this fragmentation of the opposition has also fuelled the perpetration of war crimes and crimes against humanity without an effective accountability mechanism being available. This will be discussed further below.

\subsection*{2.3. Territorial Control}

Since the beginning of the civil war battle lines have been constantly changing.\textsuperscript{110} Both the armed opposition groups and the Assad regime have known military victories and defeats. The last report of the UN Commission of Inquiry summarized the military situation on the ground as follows:

\begin{quote}
Fighting continued, with both sides consolidating forces in their primary strongholds. Government forces continued to control major cities and lines of communications, while anti-government armed groups reinforced their presence in large swaths of the northern and eastern governorates, and areas along the Jordanian border.\textsuperscript{111}
\end{quote}

The Assad regime holds most strategic military positions, economically important areas, air force bases and main lines of communication across the country.\textsuperscript{112} While the government forces were able to recapture some opposition strongholds in 2013, several analysts observe that the territorial gains of the government are owed to the military assistance of foreign fighters, in particular of the Hezbollah and the Iranian guard.\textsuperscript{113} Still, the Assad regime has lost control over substantive parts of the Syrian territory, which are ruled by various rebel groups at present. And, to illustrate the fissured grip of the Assad regime over the Syrian territory, it must be noted also that even in the areas under the regime’s control, the government is struggling to provide the most basic services and ensure security.\textsuperscript{114} The provision of basic services by the opposition varies across areas under rebel control but, in general, the civilian population is suffering from a lack of access to food, water, shelter and medical assistance.\textsuperscript{115} In addition to this basic division between government-controlled areas on the one hand and opposition-controlled areas on the other, some areas are also under Kurdish control.

While it is beyond the scope of this study to map territorial possession,\textsuperscript{116} it aims at demonstrating that control of the Syrian territory is deeply divided. This, in turn, has a major impact on the lawfulness of outside assistance provided by States to either of the warring parties (see Section 6.2.3.2).\textsuperscript{117} This territorial division, it is observed, is unlikely to be resolved soon because – in the words of the Syrian deputy prime minister, Qadri Jamil – ‘neither the armed opposition nor the regime is capable of defeating the other side’ and ‘this zero balance of forces will not change for a while’\textsuperscript{118}.

\begin{itemize}
\item \textsuperscript{109} UN Report Commission of Inquiry, A/HRC/24/46, 16 August 2013, §29.
\item \textsuperscript{110} See for example UN Report Commission of Inquiry, A/HRC/24/46, 16 August 2013, §24.
\item \textsuperscript{111} Ibid. §23.
\item \textsuperscript{112} Ibid. §24.
\item \textsuperscript{113} See for example, Global Centre for the Responsibility to Protect (2013), ‘R2P Monitor’, 15 September 2013, Issue 11, at p.2.
\item \textsuperscript{114} UN Report Commission of Inquiry, A/HRC/24/46, 16 August 2013, §15.
\item \textsuperscript{115} See Swiss Agency for Development and Cooperation (2013), \textit{Factsheet SDC – Syria Crisis}, 18 July 2013.
\item \textsuperscript{117} C. Gray (2008), International law and the Use of Force, Oxford University Press, at p.81.
\item \textsuperscript{118} New York Times (2013), \textit{Kerry Presses Security Council to Act on Syrian Arsenal}, 19 September 2013.
\end{itemize}
2.4. The Violations of International Human Rights Law and International Humanitarian Law

Anti-Government armed groups conduct their operations from within densely populated civilian areas, putting civilians in the line of fire and forcing them to flee their homes. Government forces conduct their military operations in disregard of the distinction between civilians and persons directly participating in hostilities.\(^{119}\)

In view of the massive violations of the law of war and the most fundamental human rights, the war in Syria is often qualified as one of the most ferocious wars in recent history. While initially it was especially the Assad regime that was accused of mass atrocities, rebel armed groups have been catching up and are heavily contributing to this ‘lawless’ war.

Firstly, there are numerous, credible and consistent reports that document widespread and systematic gross violations of international human rights law and international humanitarian law, crimes against humanity and war crimes, committed by all State armed forces in Syria, i.e. military forces, security and intelligence forces, and pro-government militia. The regime of Assad has been particularly criticised because of its widespread attacks directed against the civilian population.\(^{120}\) The UN Commission of Inquiry refers to ‘brutal tactics’ adopted during military operations, ‘particularly by Government forces’.\(^{121}\) More specifically, the following prohibited acts are reported:

1. arbitrary detentions;
2. enforced disappearances;
3. torture and other inhuman and degrading treatment;
4. sexual violence;
5. extrajudicial executions;
6. murder;
7. indiscriminate and disproportionate attacks;
8. pillage and destruction of property;
9. attacks of protected objects and persons;
10. and use of prohibited weapons.\(^{122}\)

Several sources observe that these abuses are committed pursuant to a State policy,\(^{123}\) and that the unrestrained violence often aims at spreading terror among the civilian population, which in se is a violation of international humanitarian law.\(^{124}\)

Secondly, there are also abundant documented instances of gross human rights violations and war crimes committed by anti-government armed groups. Among others, besides the torturing and killing of captured members of the State armed forces, there are reports of widespread and systematic gross violations of international humanitarian and human rights law, crimes against humanity and war crimes, committed by all State armed forces in Syria, i.e. military forces, security and intelligence forces, and pro-government militia. The regime of Assad has been particularly condemned because of its widespread attacks directed against the civilian population.\(^{120}\) The UN Commission of Inquiry refers to ‘brutal tactics’ adopted during military operations, ‘particularly by Government forces’.\(^{121}\) More specifically, the following prohibited acts are reported:

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forces and informers, there are more and more reports of opposition forces indiscriminately shelling government controlled neighbourhoods and executing civilians. More specifically, the anti-government armed groups have reportedly committed the following prohibited acts: (1) murder; (2) extrajudicial executions; (3) hostage-taking; (4) torture; (5) recruitment and use of child soldiers; (6) indiscriminate attacks; (7) attacking protected objects and persons. Some sources suggest that the armed opposition may have been guilty of using prohibited chemical weapons, but this has not been confirmed. For a long time, it was reported that the frequency, gravity and scale of these abuses was much lower than the ones committed by State armed forces. However, the exponential increase of accounts of mass executions and atrocities committed by the anti-government armed groups may have started to tilt the balance.

The number of reported violations by the opposition is constantly increasing both in gravity and in scale and according to several eye-witnesses, the opposition is as guilty of international crimes as the State armed forces.

Thirdly, Kurdish armed groups have also been accused of having recruited and used child soldiers in hostilities. There are accounts of violations of international human rights law and humanitarian law, albeit on a lower scale than the armed opposition groups and armed forces of Assad.

In summary, all parties to the conflict act in defiance of international law when it comes to the treatment of civilians and hors de combat, as well as the utilized means and methods of war. Regarding the latter, government and anti-government forces have massively exposed civilians to the dangers of war and maximized the risks of civilians being killed during armed attacks. Moreover, spreading terror has become a regular practice of both the government forces and several armed opposition groups. For instance, there are many reports that both parties use snipers to control both the movement of people and assert control over areas, and that these snipers regularly fire at civilians. Last but not least, the documented use of chemical weapons (see Section 4.2) is also revelatory of the inhuman character of the armed conflict in Syria.

128. See for example, UN Report Commission of Inquiry, A/HRC/21/50, 16 August 2012, §89.
133. Ibid. §§53, 62, 94, 110.
3. THE INTERNATIONAL RESPONSES TO THE SITUATION IN SYRIA

Positions varied in the international community on how to deal with the conflict. Some States demanded the immediate departure of the President; others focused on preventing any form of outside intervention. Others continued to provide military supplies to the Government. Still others called for funding, and provided communication and material support to anti-Government armed groups. The alleged presence of foreign advisers was also a point of contention among States, as was the use of sanctions. The uncertain international context undermined the efforts of the joint special envoy to achieve a political solution to the conflict.136

This section gives an overview of the international responses to the situation in Syria. In particular, it examines (1) the UN condemnations and EU arms embargoes and sanctions, as well as (2) the legitimacy attributed to both the armed opposition and the regime of Bashar al-Assad by the EU, the Arab League, the UN and individual States. These specific international actions and reactions do have a particular value for they have to be taken into consideration when assessing the legality of arms transfers to Syria (see Section 6).

3.1. Condemnations, Sanctions and Arms Embargoes

The use of armed force by the Syrian regime and the Syrian opposition, as well as the use of chemical weapons, has been condemned by both regional and international organizations, as well as by single States, which have all adopted different measures. The accountability for atrocities has been attributed to the Syrian government or the opposition in different instances over time. Some institutions have stressed that some parties in the conflict have been more responsible than others in committing human rights and humanitarian law violations, however – as demonstrated below – the government is more often blamed for such activities.

3.1.1. The United Nations

At the global level, General Assembly, the Security Council, the Human Rights Council, as well as several other UN entities, have all at regular intervals condemned the massive abuses in Syria and called upon the political leaders of both the Syrian government and the armed opposition to fulfil their responsibility to the Syrian people. However, the current analysis indicates that the UN has been unable to agree upon coercive measures to be adopted against the different entities responsible for violations of international law, such as an arms embargo, or to foster a sustainable and unified international response to the crisis in Syria.

The **UN General Assembly** has adopted five resolutions on ‘The situation (of human rights) in the Syrian Arab Republic’ since the beginning of the uprising.137 The

first resolution was adopted in December 2011 and condemned the violations of human rights and fundamental freedoms as well as the use of violence by the Syrian authorities. It remained silent on the role and conduct of the Syrian opposition and armed groups. As from the second resolution onwards, the General Assembly called upon both the ‘Government’ and ‘all parties in the Syrian Arab Republic, including armed groups’ to stop all violence, reprisals and human rights abuses immediately. For the first time, the General Assembly qualified some behaviour in Syria as ‘terrorist acts’ in August 2012. In December and May 2013, the General Assembly strongly condemned the escalation of violence, the continued widespread and systematic gross violations of human rights, and the continued use of heavy weapons and aerial bombardments by the Syrian authorities against the Syrian population.

It is noticeable that according to the terminology of the five General Assembly resolutions, the abuses perpetrated by the government forces – including the Syrian armed forces, intelligence forces and shabbiha militias – are more serious both in scale and in nature than those perpetrated by the opposition. Even in the last resolution, the General Assembly almost exclusively referred to, and specified, the misconduct of ‘the Syrian authorities’, especially its increased use of heavy weapons; the General Assembly neither mentioned the opposition by name, nor pointed to specific reprehensible acts of the rebellion.

In August 2011, only few months after the start of the uprising, a Presidential Statement by the UN Security Council condemned the human rights violations and the use of force by the Syrian authorities and urged ‘all sides’ to end all violence. In the same document, the Security Council also ‘express[ed] profound regret at the death of many hundreds of people’. Seven months later, in March 2012, the Presidential Statement of the Security Council stipulated that the Council regretted ‘the death of many thousands of people in Syria’ and expressed its full support of the six-point proposal outlined by the Joint Special Envoy of the UN and the League of Arab States, Kofi Annan, to which the Syrian government committed itself on 25 March 2012.

139. Ibid.
146. Statement by the President of the UN Security Council, S/PRST/2011/16, 3 August 2011; See also Statement by the President of the UN Security Council, S/PRST/2012/6, 21 March 2012.
148. Statement by the President of the UN Security Council, S/PRST/2012/6, 21 March 2012. This document also contains an overview of the six-point proposal submitted to the Syrian authorities by the Joint Special Envoy (for an overview of this six-point proposal, see Report of the UN Secretary-General on the implementation of UN Security Council Resolution 2043, S/2012/523, 6 July 2012, §6). On 25 March 2012, the Syrian government
On 5 April 2012, the Security Council adopted its third Presidential Statement on the situation in Syria in which it called upon all parties, including the opposition, to cease armed violence in all its forms. More than one year later, on 2 October 2013, the Security Council adopted its fourth statement, in which it unambiguously condemned the widespread violations of human rights and international humanitarian law by both the Syrian authorities and armed groups. It also referred to ‘the increased terrorist attacks (…) carried out by organisations and individuals associated with Al-Qaeda’, which it condemned. In this last Presidential Statement, the Security Council – in contrast with the UN General Assembly – clearly puts both sides of the conflict on an equal footing in the sense of committed abuses and the obligation to stop behaviour prohibited under international law immediately. This trend of holding both the Syrian regime and the armed opposition accountable is found also in some resolutions of the Security Council.

More than one year after the start of the hostilities in Syria, on 14 April 2012, the Security Council adopted a first resolution on the situation in Syria. In Resolution 2042, it condemned ‘the widespread violations of human rights by the Syrian authorities, as well as any human rights abuses by armed groups’. The wording of this resolution clearly indicates an imbalance in the perpetration of atrocities, which seemed to be heavier for the Syrian government than for the opposition. The Security Council called upon (1) the Syrian government to urgently (a) cease troop movements towards population centres, (b) cease all use of heavy weapons in such centres, and (c) begin pullback of military concentrations in and around population centres; (2) all parties in Syria, including the opposition, to cease all armed violence; and (3) the Syrian authorities to allow immediate, full and unimpeded access of humanitarian personnel to all populations in need.

Only one week later, on 21 April 2012, the Security Council adopted its second resolution on the situation in Syria. In Resolution 2043, the Security Council once again condemned the human rights abuses perpetrated by both the Syrian authorities and armed groups; asked all parties to immediately cease all armed violence in all its forms; and – importantly – authorized the establishment of the UN Supervision Mission in Syria (UNSMIS). This peacekeeping supervision operation, set up for an initial 90-day period, was to comprise of 300 unarmed military observers and an appropriate civilian component. It was mandated to monitor a cessation of armed violence by all parties and to monitor and support the full implementation of the Envoy’s six-point proposal to implement the six-point proposal. See also Statement by the President of the Security Council, S/PRST/2012/10, 5 April 2012, in which the Security Council reiterates its support for the six-point proposal of the Envoy. The six-point proposal was never implemented, however.

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149. Statement by the President of the UN Security Council, S/PRST/2012/10, 5 April 2012.
151. Ibid.
153. Ibid, at pp.1 and 2; See also UNSC Res. 2043, S/RES/2043, 21 April 2012, §2. The latter Resolution also called upon to withdraw its troops and heavy weapons from population centers to their barracks or temporary deployment places to facilitate a sustained cessation of violence.
155. Ibid. §10.
156. UNSC Res. 2043, S/RES/2043, 21 April 2012.
157. Ibid. §4.
158. Ibid. §4.
UNSMIS was fully operational on 30 May 2012, but it was compelled to suspend its activities mid-June 2012 following the intensification of armed violence across the country which had rendered operational activities unworkable.\(^\text{160}\) In Resolution 2059, adopted on 20 July 2012, the Security Council renewed the mandate of UNSMIS for 30 days. This resolution reported that any further extension of the mandate of UNSMIS thereafter would be possible only in the event of a ‘cessation of the use of heavy weapons and a reduction in the level of violence by all sides sufficient to allow UNSMIS to implement its mandate.’\(^\text{161}\) The UNSMIS mandate finally came to an end on 19 August 2012, since the conditions for renewal of the mandate were not met.\(^\text{162}\)

After the adoption of Resolution 2059, the Security Council was again characterized by a stalemate lasting over a year within the P-5 over the Syria crisis. In September 2013, the UN Secretary-General said at a press conference that ‘two and a half years of conflict in Syria have produced only embarrassing paralysis in the Security Council.’\(^\text{163}\) The deadlock in the negotiations at the Security Council was overcome on 27 September 2013, when the Security Council unanimously adopted Resolution 2118 following a chemical attack in Syria one month earlier (see Section 4.2).\(^\text{164}\) The Security Council qualified this use of chemical weapons as a threat to international peace and security, condemned it in the strongest terms,\(^\text{165}\) and stressed that those responsible for any use of chemical weapons must be held accountable.\(^\text{166}\)

In this Resolution, the Security Council also (a) welcomed the Framework for Elimination of Syrian Chemical Weapons dated 14 September 2013 between Russia and the USA with a view to ensuring the destruction of the Syrian chemical weapons program;\(^\text{167}\) (b) endorsed the timetable and special procedures for the destruction of the chemical weapons in Syria established by the Executive Council of the Organization for the Prohibition of Chemical Weapons (OPCW) on 27 September 2013;\(^\text{168}\) and (c) decided that ‘the Syrian Arab Republic’ shall comply with all aspects of the OPCW decision of 27 September and cooperate fully with the OPCW and the United Nations to that end.\(^\text{169}\) It underscored that ‘no party in Syria’ – i.e. neither the Syrian government nor any non-State actor – should use, develop, produce, acquire, stockpile, retain, or transfer chemical weapons.\(^\text{170}\) Hence, the Security Council did not assign blame for the chemical attack which killed more than 1,400 people.

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\(^{159}\) Ibid. §6; See also Preliminary Understanding between the Government of the Syrian Arab Republic and the United Nations of 19 April 2012, S/2012/250, 23 April 2012.

\(^{160}\) Report of the UN Secretary-General on the implementation of Security Council Resolution 2043, S/2012/523, 6 July 2012, §16.

\(^{161}\) UNSC Res. 2059, S/RES/2059, 20 July 2012, §3.

\(^{162}\) On this issue, see UN website on peacekeeping missions.


\(^{165}\) UNSC Res. 2118, S/RES/2118 (2013), 27 September 2013, §§1 and 2.

\(^{166}\) Ibid. at p.2.


\(^{168}\) UNSC Res. 2118, S/RES/2118, 27 September 2013.

\(^{169}\) Ibid.

\(^{170}\) Ibid. §6.

\(^{171}\) Ibid. §§4, 5, 11, 14, 18, 19.
Non-compliance with Resolution 2118, the Security Council agreed, would be sanctioned with the adoption of measures under Chapter VII of the UN Charter, including the use of force.\footnote{172} Many States welcomed the unanimous adoption of Resolution 2118,\footnote{173} which gave ‘fresh hopes for a renewed role of the Security Council’.\footnote{174} But all in all, the Security Council has been very weak in responding to the crisis in Syria, and has been unable to agree on coercive measures – arms embargoes, sanctions, the use of force, etc. – to be adopted.

The \textbf{UN Human Rights Council} has adopted several resolutions on Syria, in which it unequivocally condemns the use of lethal violence and gross and systematic violations of human rights by the Syrian authorities, members of the Syrian military and security forces, and its affiliated militias.\footnote{175} The Human Rights Council, in its resolutions, especially pointed to, and deplored, the Syrian regime’s use of heavy artillery, tanks, warplanes and Scud missiles to attack residential areas of cities and towns.\footnote{176} In June 2012, the Human Rights Council for the first time called upon ‘all parties’ to put an end to violence in all its forms.\footnote{177} In April 2013, it also condemned ‘terrorist acts and acts of violence that may foment sectarian tensions’,\footnote{178} and explicitly referred to ‘abuses committed by anti-Government armed groups’ while stressing that they ‘did not reach the intensity and scale of violations committed by government forces and its affiliated militia’.\footnote{179} In May and June 2013, the Human Rights Council condemned ‘all violence (…) irrespective of where it comes from’ and called upon ‘all parties’ to immediately put an end to all forms of violence.\footnote{179} Yet, it is notable that the Human Rights Council once more stressed that the human rights abuses and violations of international humanitarian law by armed opposition groups were less pervasive than the atrocities of the Assad regime.\footnote{180}

\textit{All in all, the General Assembly, the Security Council, the Human Rights Council, as well as several other UN entities,\footnote{182} have been unable to firmly respond}
to the crisis in Syria or to agree upon coercive measures to be adopted against the different entities responsible for violations of international law, such as an arms embargo. This paralysis at the UN level contrasts sharply with the firm approach, at times, of other instances such as the European Union and some single States.

3.1.2. The European Union

Since the beginning of the conflict in Syria, the EU has responded decisively to the violent repression of demonstrations by Syrian armed forces and security forces and has condemned the widespread violations of human rights and humanitarian law in Syria. Initially, the EU only referred to the serious abuses, including war crimes and crimes against humanity of the Syrian regime, but over time it also mentioned the war crimes committed by anti-government armed groups. Nevertheless, several EU documents stress that the abuses of the rebels 'do not reach the intensity and scale of those committed by the regime forces and affiliated militias'.

As violence and repression continued, the EU adopted 23 sets of restrictive measures against Syria which imposed an arms embargo, the freezing of funds and economic resources, travel bans, import and export restrictions, etc. This section focuses on the imposition and subsequent lifting of the EU arms embargo on Syria, which are considered in chronological order. A good understanding of the history and content of the EU sanctions is necessary to assess the consequences and prospects of European arms transfers to Syria.

In May 2011, the EU for the first time condemned the violent repression of peaceful protest and imposed sanctions on Syria. The EU adopted Decision 2011/273 and Regulation 442/2011 prohibiting all EU Member States from supplying, transferring or exporting arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which could be used for internal repression in Syria. The prohibition did not apply to, amongst others, non-combat vehicles, non-lethal military equipment or equipment which could be used for internal repression, if they were intended solely for humanitarian or protective use.
In January and June 2012, the Council adopted two particularly important regulations which detailed the items and services banned under the arms embargo, thereby strengthening the effectiveness of the embargo. Regulations 36/2012 and 509/2012 still contain the same derogations as those referred to above, but they also prohibit, amongst others, the supply of equipment, technology or software that could be used for the monitoring or interception of communications by the Syrian regime. Also, they prohibit the supply of certain goods that might be used for the manufacture or maintenance of material which might be used for internal repression. One month later, in July 2012, in an effort to increase the effectiveness of the arms embargo, the Council adopted Decision 2012/420 which compelled EU Member States to inspect all vessels and aircraft bound for Syria in their seaports, airports and territorial sea, to confirm whether there are reasonable grounds to believe that the cargo of such vessels and aircraft contains sanctioned items.

In November 2012, the Council renewed the restrictive measures, including the arms embargo, until 1 March 2013. At the end of February 2013, the Council agreed to renew the restrictive measures against Syria for a further three months, amending them so as to provide greater non-lethal support and technical assistance for the Syrian civilians and opposition. The arms embargo was eased accordingly, as it enabled the delivery of (1) non-lethal military equipment for the protection of civilians or for the Syrian National Coalition, (2) the delivery of non-combat vehicles manufactured or fitted with materiel to provide to the Syrian National Coalition, (3) the provision of technical assistance and services to the Syrian National Coalition of the protection of civilians.

Whereas in March 2013, Ashton still declared that ‘no member state has proposed that it [i.e. arms embargo] be lifted to arm the opposition’, several Member States have since then advocated for lifting the arms embargo. In April 2013, the Council once more eased certain EU sanctions against Syria and decided, amongst others, to allow the supply of certain equipment to the Syrian National Coalition. Yet, France and the UK considered this relaxation of the arms embargo as unsatisfactory and started lobbying for a total lift of the arms embargo in order to be able to supply lethal arms to the Syrian opposition forces.

In late May 2013, when the Council had to decide upon the renewal of the restrictive measures which expired on 1 June, the 27 EU Member States were unable to agree about allowing the supply of arms to the armed opposition in Syria. France and the UK argued that the option of resorting to arms transfers would put pressure

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196. See also EU Council Conclusions on Syria, 18 February 2013, §7.
197. This also includes brokering services.
199. Remarks by EU High Representative Catherine Ashton on the situation in Syria, 13 March 2013.
on the regime. Another argument of both countries was that Western States could no longer adopt a ‘wait and see’ attitude in the face of the massacres in Syria, and that arms transfers would at the very least allow the opposition to defend itself as well as the civilians. On the other hand, the other EU Member States stressed the risks of arming the Syrian rebellion, such as the illicit proliferation and diversion of weapons in Syria and the whole region; increased Russian arms transfers to the Assad regime; an inadequate use and storage of weapons; the escalation of the armed violence; etc. Austria also emphasized that ‘there are more than enough weapons in Syria’ and that ‘lifting the EU arms embargo undermines the US-Russia understanding that opens a window of opportunity towards a new political process.’ The impact of this disagreement was not insignificant, as it implied the almost total lift of the arms embargo to Syria. While the vast majority of the EU Member States opposed this major shift in EU policy, they assented in order to preserve the other set of restrictive measures (financial, economic, etc.) against Syria. But at the same time, several Member States, including Belgium, the Netherlands, Sweden, Romania, Finland, the Czech Republic and Austria, immediately declared they had no intention of arming the Syrian rebels.

The lift of the European arms embargo was not synonymous with an immediate and unconditional transfer of arms to the Syrian opposition. This is because the EU Member States committed to several conditions with regard to the possible export of arms to Syria, – conditions which were articulated in a Council declaration on Syria of 27 May 2013. First, Member States would not proceed with the delivery of military equipment until August 2013. Second, arms can be transferred only to the National Coalition. Third, arms transfers are intended for the protection of civilians. Fourth, Member States must require adequate safeguards concerning the end-user and final destination of the delivery. And fifth, decisions on arms exports must be based on the EU Common Position (see Section 6.1.2). Council Decision 2013/255 concerning restrictive measures against Syria ‘took note’ of these commitments by Member States. The Council decision applied until 1 August 2013. Summarized, unlike the United Nations the EU has adopted a whole set of coercive measures, including a temporary arms embargo, against Syria. The EU has been unable to uphold a common position with regard to arms transfers to the Syrian opposition as well as regarding the possibility of the use of force on the Syrian territory by EU Member States. Nevertheless, at the internal level, the EU has constantly tried to find negotiated solutions in order to preserve its cohesion. With regard to the Syrian regime, the EU has continued to apply diplomatic pressure and imposed targeted measures.
sanctions on a growing number of individuals and entities. And finally, at the global level the EU, through the High Representative Catherine Ashton, from the early beginning of the crisis in Syria, has called upon to move forward on a diplomatic process and urged all international players to 'move beyond our differences'.

### 3.2. International recognition

#### 3.2.1. The United Nations

At the global level, the UN has consistently referred to the regime of Bashar al-Assad as the 'Syrian authorities', 'Syrian government', 'Government of the Syrian Arab Republic' or 'Syrian regime'. And while many UN Member States have stressed that they see the future of Syria without Bashar al-Assad, UN documents time after time qualify this individual as the 'President' – i.e. the head of State – of Syria. The Permanent Representatives of the Syrian Arab Republic in both Geneva and New York still belong to the Bashar al-Assad government. Also, the Assad regime still occupies the seat for Syria at the General Assembly and the other UN treaty and charter based bodies.

On the other hand, the groups opposing have been referred to as 'the Syrian opposition', 'armed opposition groups' and 'anti-Government armed groups'.

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213. For the UN Permanent mission in Geneva, see RTBF Opinions, 6 September 2013. For the UN Permanent mission in New York, see Permanent Mission of the Syrian Arab Republic to the UN website.
In other words, whereas the Assad regime is seen as a State actor, the UN still qualifies the opposition groups as non-State actors.

Interestingly, the Security Council, the General Assembly, the Human Rights Council, the Secretary-General, as well as the Joint Special Envoy, have all at regular intervals referred to ‘the legitimate aspirations and concerns of the people of the Syrian Arab Republic’.  

### 3.2.2 Regional Organizations and Individual States

At the regional level, the EU has not formally rejected the actual Assad government in Syria. EU documents still refer to the Assad regime as the ‘Government of Syria’ and the ‘Syrian Authorities’, which still functions as the official representative organ of the Syrian State. It must be emphasized, however, that the EU has consistently, from 2011 onwards, called for Bashar al-Assad to leave power and promotes a ‘future without Assad’.

While the EU accepts the Syrian National Coalition as ‘legitimate representatives of the Syrian people’, it has not given any official status to this entity, which is still seen as a Syrian opposition movement. Thus in fact the EU has adopted a biased policy as it actually sees the Assad regime as the entity representing the Syrian State, while it sees the National Coalition as the entity representing the Syrian people. It is important to note that the EU calls for ‘a swift establishment, by mutual consent, of a transitional government body with full executive powers and control of all governmental and all security institutions’.

In November 2012 the six member States of the Gulf Cooperation Council (GCC) – Saudi Arabia, Bahrain, the United Arab Emirates, Oman, Qatar and Kuwait – were first to recognize it as ‘the legitimate representative of the brotherly Syrian people’. This initiative was followed by the League of Arab States, which recognized

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217. See for example Remarks by EU High Representative Catherine Ashton on the situation in Syria, 13 March 2013; EU Council conclusions on Syria, 18 February 2013, §3; The European Union and Syria-Factsheet, 22 April 2013, at p.2; EU Council conclusions on Syria, 23 January 2012, §1; EU Council conclusions on Syria, 10 October 2011, §2

218. EU Council Conclusions on Syria, 10 December 2012; The European Union and Syria-Factsheet, 18 October 2013.

219. EU Council Conclusions on Syria, 21 October 2013.

220. Ibid. §2.

the coalition as the ‘representative and main interlocutor with the Arab League’ and granted Damascus’ a seat in the National Coalition at the 2013 Arab League Summit in March.\textsuperscript{222}

Various individual States, including France, the UK, the US, Turkey and various Gulf States, have recognized the National Coalition as the ‘sole legitimate representative’ of the Syrian people.\textsuperscript{223} Likewise, the Group of Friends of the Syrian People, which assembles more than 100 countries, repeatedly recognized the coalition as the legitimate representative of the Syrian people.\textsuperscript{224} Libya seems to be the only State which formally recognized the Syrian opposition group as ‘the sole legitimate government in Syria’.\textsuperscript{225} In contrast, several other influential States, including China, Iran and Russia, have rejected the National Coalition’s legitimacy and have continued to back President Assad and his regime.

Last, it must be emphasised that several States have proposed a mixed solution and see the future Syrian government as comprising both representatives from the opposition and the actual government. To illustrate, the Final Communiqué of the Action Group for Syria, which is a group of influential organizations and countries,\textsuperscript{226} observed that the transitional governing body it proposes to establish ‘could include members of the present government and the opposition and other groups and shall be formed on the basis of mutual consent’.\textsuperscript{227}


\textsuperscript{224} Al Arabiya (2012), Friends of Syria recognize SNC as ‘a legitimate representative’ of Syrians, 1 April 2012; Aljazeera (2012), Friends of Syria recognize opposition, 12 December 2012.

\textsuperscript{225} Khaleej Times (2011), Libya NTC says recognizes Syrian National Council, 11 October 2011.

\textsuperscript{226} On 30 June 2012 the Secretaries-General of the United Nations and the League of Arab States, the Ministers for Foreign Affairs of China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Turkey, Iraq (Chair of the Summit of the League of Arab States), Kuwait (Chair of the Council of Foreign Ministers of the League of Arab States) and Qatar (Chair of the Arab Follow-up Committee on Syria of the League of Arab States) and the High Representative of the European Union for Foreign Affairs and Security Policy met at the United Nations Office at Geneva as the Action Group for Syria, chaired by the Joint Special Envoy of the United Nations and the League of Arab States to Syria. On this issue, see Report of the Secretary-General on the implementation of Security Council Resolution 2043, S/2012/523, 6 July 2012, §4.

\textsuperscript{227} Action Group Syria, Final Communiqué, 30 June 2012, §6; Report of the UN Secretary-General on the implementation of Security Council Resolution 2043, S/2012/523, 6 July 2012, §4.
This section gives an overview of the arms and military material reportedly detained and used by the different parties involved in the conflict. A basic distinction is made between conventional and chemical weapons. This glossary of weapons used by the different actors in Syria is based mainly on the findings of the UN Independent International Commission of Inquiry on the Syrian Arab Republic.  

4.1. Conventional Weapons

The term conventional weapon refers to weapons that are neither nuclear, nor biological, nor chemical weapons. Conventional weapons include small arms and light weapons, battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships and missiles/missile launchers.

State armed forces in Syria are equipped with a wide variety of conventional weapons. Between 2001-2005 and 2006-2010, Syria’s imports of conventional weapons had increased by more than 300 per cent. Hence, when the crisis began, the Syrian regime was well-equipped and particularly strong. Moreover, during the Syrian armed conflict, these governmental stockpiles – strongly reduced because of the hostilities – have been supplied by foreign sources, as discussed below (see Section 5.1). Here, it suffices to stress that the whole panoply of conventional arms were brought into action to put a stop to armed opposition. State armed forces have used heavy weapons including tanks, artillery, helicopters, and warplanes in the bombardment of cities and villages. There are clear indications that strategic missiles, cluster and thermobaric bombs, and other military materials were used in densely populated areas qualified as being pro-opposition.

Since the very start of the Syrian civil war, armed opposition groups have been able to improve their access to weaponry, albeit unequally. They have looted military equipment from several government army bases in Syria and set up clandestine arms production factories, but important amounts of weapons and ammunitions have also been provided to them by external sources, i.e. foreign States, commercial entities, criminal organizations, and wealthy individuals. While section five further analyses

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the most important foreign arms providers, as well as the main transit routes through which the arms are delivered, the question that arises here is: what type of weapons do the rebels detain? Armed opposition groups are mainly equipped with small arms and light weapons (SALW). However, during 2013 they have increased their equipment and use of anti-tank and anti-aircraft systems, as well as indirect fire assets. They have also employed mortars and artillery guns to target military and security positions, as well as pro-government localities (see also Section 5.2). Several sources report the use of improvised explosive devices by the Syrian opposition, which caused both Syrian military and civilian casualties.

4.2. Chemical Weapons

Chemical weapons are weapons of mass destruction. The term chemical weapon is applied to ‘any toxic chemical or its precursor that can cause death, injury, temporary incapacitation, or sensory irritation through its chemical action’, and the use of chemical weapons is prohibited as a matter of customary international law. The use of chemical weapons is absolutely forbidden because their use is ‘inherently indiscriminate’: conventional weapons can at least notionally be targeted to avoid collateral civilian casualties in a way that is just about impossible for weapons-of-mass-destruction use, certainly in urban warfare as distinct from an isolated battlefield context.

In April 2013, the armed opposition and the government in Syria – a State suspected of having one of the most advanced chemical warfare capabilities – accused each other of using chemical weapons. Following these mutual accusations and disturbing reports of victims displaying neurotoxic symptoms, the UN Secretary-General decided to establish a UN Mission with the mandate to ‘ascertain the facts related to the allegations of use of chemical weapons and to gather relevant data and undertake the necessary analyses for this purpose and to deliver a report to the Secretary-General’. The mission members arrived in Syria on 18 August, three days before another reported

237. Ibid.
240. See in this regard [OPCW website], last consulted on 1 November 2013.
244. These alleged attacks were perpetrated in Saraqeb (29 April 2013), Jobar (mid April) and Ghouta (21 August). See in this regard Présidence de la République française (2013), ‘Programme chimique syrien : Cas d’emploi passés d’agents chimiques par le régime’, Synthèse nationale de renseignement déclassifié, at p.6; Médecins sans Frontières (2013), Syrie : des milliers de patients souffrant de symptômes neurotoxiques soignés dans les hôpitaux soutenus par MSF, 24 April 2013; Nuclear Threat Initiative (2013), Syrian Envoy : Rebel Chemical Materials Cache discovered, 9 July 2013.
245. UN Report on the Alleged Use of Chemical Weapons in the Ghouta Area of Damascus on 21 August, 13 September 2013, §1, last consulted on 1 November 2013.
chemical attack in the Ghouta area on 21 August, during which several hundreds of persons (some sources even speak about 1,400 deaths) died. The Secretary-General therefore instructed the mission members to focus their investigation efforts on the Ghouta allegations, and so this is what they did.

The Report on Allegations of the Use of Chemical Weapons in the Ghouta Area of Damascus was transmitted to the Secretary-General on 13 September. The report concludes that ‘chemical weapons have been used in the ongoing conflict between the parties in the Syrian Arab Republic, also against civilians, including children, on a relatively large scale’. While the report of the UN Mission remains silent on those responsible for the chemical attack, both independent experts and Western governments have observed that forensic details in the report suggest that the attack was ordered and executed by the Assad regime. For example, the delivery systems used are described as ‘surface to surface rockets capable of delivering significant chemical payloads’. Even though the origin of these weapons still is to be identified, both the size and high sophistication of these weapons may be indicative of the responsibility of the Assad regime, especially since the Syrian armed opposition is not known to possess such weapons, or to have the capacity to handle them. Another significant element would be the trajectory followed by two munitions identified by the inspectors, which suggests that they were launched from government-controlled areas. However, the inspectors have pointed out the limits of their survey; first, because ‘the time necessary to conduct a detailed survey (…) as well as take samples was very limited’, and second because ‘[f]ragments and other possible evidence have clearly been moved prior to the arrival of the investigation team’.

It must be noted that the international community in the end remains divided on the question of guilt. While, amongst others, France and the United States blame the Assad regime for the chemical attack, Russia and Syria – supported by several experts – maintain that the rebels (i.e. one of its components) were behind this attack in order to elicit a foreign intervention.

246. Ibid. at p.5. The inspectors continued by saying that ‘[i]n particular, the environmental, chemical and medical samples we have collected provide clear and convincing evidence that surface-to-surface rockets containing the nerve agent sarin were used.’


251. Based on the orientation of the impact craters, orientation of certain surviving munitions components and other damage in the areas, the Inspectors concluded that ‘the rockets are believed to have arrived from the northwest’. At the time of the Goutha attack, the northwest of Damascus was dominated by the Assad regime. See Report on the Alleged Use of Chemical Weapons in the Goutha Area of Damascus on 21 August, 13 September 2013, at p.19.

252. Ibid. at pp.18 and 22.


254. See the interview of Bashar Al-Assad on Fox News Channel on 18 September, last consulted on 1 November 2013;
After the release of the UN Report, the Secretary-General, followed by various States, condemned the use of chemical weapons, which it qualified as being a war crime and a grave violation of international law, in particular the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare and other relevant rules of customary international law. Finally, the Secretary-General observed that the international community has a ‘moral responsibility’ to hold accountable those responsible for the chemical attack. Following the heated debates at the international level on the possible implications of the use of chemical weapons in Syria, and the threat of a military intervention which would be orchestrated by the United States of America, on 14 September 2013 Syria acceded to the Convention on the Chemical (CWC). That same day, Russia and the United States, who have continually clashed over how to respond to the Syrian civil war, reached an agreement on a framework for the identification, securitization and elimination of the Syrian chemical weapons arsenal, which was welcomed by important international players such as the EU and the UN. Syria agreed to abide by the plan, which has been formalized by Security Council Resolution 2118 that was unanimously adopted on 27 September 2013. This Resolution imposes a strict and compelling timeline for the destruction of the chemical weapons and production facilities in Syria, a process which has been elaborated with the support of the Organization for the Prohibition of Chemical Weapons (OPCW). The destruction of Syria’s chemical weapons arsenal began on 6 October 2013 and on 31 October, the Joint Mission of the OPCW and the UN confirmed that Syria’s chemical weapons facilities are inoperable. All in all, it is important to stress that the chemical attack and resulting threat of a military strike in Syria have become a catalyst for a new diplomatic determination at the international level to resolve the Syrian conflict.
5. ARMS TRANSFERS TO SYRIA: PRACTICE

The fluctuating and erratic support provided by a number of countries and wealthy individuals to the armed groups was sufficient to escalate hostilities, but is unlikely to fundamentally determine the course of the conflict.266

The arms transfers to Syria are reflective of the deep division that exists at the international level on how to respond to the Syrian crisis. Whereas some States have funnelled an important amounts of weapons to the Assad regime since the early days of the crisis, others have supplied arms to the armed opposition forces, and still others have imposed (and subsequently lifted) an arms embargo against Syria. This section aims at providing a brief overview of the most important States involved in the transfers of arms and military material to Syria. A basic distinction is made between arms transfers to State armed forces on the one hand, and to armed opposition groups on the other. It also gives an insight as to the main transit routes through which the arms are delivered. Importantly, this section focuses on the delivery of arms by States; albeit important, the transfer of weapons by other actors – such as commercial entities, terrorist organizations, individuals – goes well beyond the scope of the present report.267

5.1. Arms Transfers to State Armed Forces

The government stockpiles of weapons have been supplied mainly by Russia and Iran, as well as several other States such as China, North Korea, Belarus and Venezuela, albeit on a smaller scale. According to the Stockholm International Peace Research Institute (SIPRI), during the years 2008-2012, Russia supplied 71 per cent of Syria’s imports of major conventional weapons, followed by Iran and Belarus, who respectively supplied 14 and 11 per cent of Syria’s major weapons.268

Russia has supplied arms throughout the entire period of the crisis in Syria, despite increasing international pressure and repeated calls from several States, regional and international organizations to stop delivering weapons to the Syrian government.269 Even if, at certain times, Russian officials issued declarations according to which some deliveries would be suspended and/or limited to defence systems,270 there is clear evidence of important arms transfers of both combat and defence systems.271 These reported deliveries have, for the most part, not been contradicted by the Russian authorities, which have always insisted on the importance of fulfilling its contractual obligations with

It must be emphasized also that on several occasions, Russia qualified the arms embargoes in place against Syria as ‘dishonest’, because in practice they would cut off military supplies to the government, but allow opposition forces to obtain weapons.\(^{273}\)

Russia’s weapons sales to Assad, it is argued, aim at giving the regime a good chance for defending itself against the opposition forces, but also – as declared by a Russian diplomat – against Western powers if the latter would decide to attack Syria.\(^{274}\)

The following Russian arms transfers have been addressed in depth in the media. In early 2012, a Russian-operated ship reportedly laden with four containers – about 60 tons of ammunition – docked at a Syrian port.\(^{275}\) According to various sources, since April 2013 the number of ships travelling to Syria from a port in Ukraine used by Russian arms exporters ‘increased sharply’.\(^{276}\) In May 2013, it was reported that Russia delivered sophisticated S-300 antiaircraft systems, anti-ship cruise missiles, and highly advanced rocket launchers to the Syrian armed forces.\(^{277}\) In July 2012, Moscow insisted that it would deliver Mi-25 helicopter gunships to Syria in the face of Western disapproval.\(^{278}\) In August 2013, Reuters reported that Syrian payments to Russia have increased in recent months.\(^{279}\) A Russian defence industry source said that the Assad regime had started paying off a nearly $1 billion contract for four S-300 anti-aircraft missile systems, as well as another $550 million order for 36 Yak-130 trainer fighter planes.\(^{280}\) These are but a few examples of the overload of Russian arms and military material transfers to the Syrian regime.

Besides Russia, Iran has remained one of Assad’s most loyal allies throughout the crisis. In 2012, the UN Panel of Experts on Iran concluded that ‘[t]he Syrian Arab Republic continues to be the central party to illicit Iranian arms transfers’.\(^{281}\) In addition to sending Revolutionary Guards and military advisors (see Sections 2.1 and 2.3) to Syria, Iran has evidently also supplied arms and military material to the regime forces. However, it must be noted that in spite of the many accusations against Iran, the number of confirmed arms transports into Syria are limited.\(^{282}\) Therefore, the precise amount and type of weapons funnelled from Iran to Syria is opaque and contested.

To illustrate this, in February 2011, the Turkish authorities seized a truck containing explosives that originated in Iran and was bound for Syria,\(^{283}\) and in March 2011 Turkish

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274. Ibid. See also interview in Time (2013), Top Russian Diplomat Explains Reasons for Syrian Arms Sales, 17 May 2013.
280. Ibid.
283}
authorities seized 19 crates containing assault rifles, machine guns, ammunition, and mortar shells from an Ilyushin-76 cargo aircraft operated by an Iranian cargo airline destined for Syria. The latter transfer was confirmed by the UN Panel of Experts on Iran. However, the UN Panel of Experts could not confirm the multiple accusations by several States that Iran has started providing weapons to Syria through Iraq in the course of 2013.285

Western diplomats have reported that Iran stepped up military support to Assad in 2013 and, according to Middle Eastern intelligence officials, Iran has also provided surveillance drones to the forces of Assad.287 Both allegations have been confirmed by Syrian armed opposition.288

**North Korea** is also known for being an ally of the Assad regime, albeit a ‘quiet’ one. According to an investigation of *Human Rights First*, North Korea has provided missile technology, arms, and technical assistance to the Syrian regime.289 In April 2012, France seized an illicit shipment of arms-related material originating in North Korea and destined for Syria.290 The UN Panel of Experts on North Korea observed that in May 2012, South Korea had seized an illicit shipment of missile-related items (10 metric tons of graphite cylinders), destined for a branch of a sanctioned North Korean enterprise in Syria.291 In June 2013, the UN Panel of Experts also underscored that Syria was involved ‘in one third of all weapons of mass destruction and arms-related incidents of non-compliance’ investigated by the Panel.292 In August 2013, Turkey reportedly seized a ship that originated in North Korea carrying gas masks, 30,000 rounds of ammunition and 1,400 pistols and rifles.293 These, as well as several other incidents,294 are evidence that North Korea has attempted to strengthen the military forces of the Assad regime.295

In May 2013, the **Lebanese Hezbollah** – a pro-regime and pro-Iran Shiite armed militia – clearly acknowledged its involvement in the Syrian conflict.296 Hezbollah forces have been fighting alongside the Syrian regime inside Syria, and their leader...

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291. UN Report of the Panel of Experts established pursuant to Resolution 1874 (2009), S/2013/337, 11 June 2013, §§44-46
292. Ibid.
294. See for example UN Report of the Panel of Experts established pursuant to Resolution 1874 (2009), S/2012/422, 14 June 2012, §§57, 58, 66.
declared in an official video that Hezbollah ‘will continue that fight’ until the end.297 This Hezbollah-Syria partnership goes together with arms transfers from Syria to Lebanon and back.298

Other States such as Belarus, China and Venezuela, have also been referred to as providing military assistance to the Assad regime.299 However, the news coverage on weapon transfers from these States is quite poor and contradictory.

5.2. Arms Transfers to Opposition Groups

The four main sources of weapons for Syrian rebel groups are (1) captured government stockpiles; (2) local and regional black markets; (3) the clandestine artisanal manufacture of weapons; and (4) arms transfers from third States.300 This part focuses on the latter source and more specifically on arms transfers supported and/or organized by the governments of foreign States. It is important to note that the substantial supply of weapons from outside Syria has become a conditio sine qua non for the survival of the armed opposition groups in Syria.

The years 2012 and 2013 have been characterized by repeated requests from the Syrian opposition for foreign governments to supply them with arms and military equipment, such as small arms and light weapons and anti-aircraft weaponry to take out the regime’s helicopters and combat airplanes.301 The heated debates following these demands are reflective of the unease of several States about the legality and appropriateness of arming Syrian non-State actors. States supportive of the revolution and subsequent rebellion in Syria have been unable to agree on a common policy on the transfer of arms to the opposition forces.302 To illustrate, whereas the EU and the USA at some point imposed an arms embargo against Syria, other States have always been actively involved in arming Syrian rebels. Moreover, for several States there has also been a major discrepancy between the official policy (i.e. against supplying arms) and the quiet practice (i.e. organizing important arms transfers).

This section, without aiming at being exhaustive, provides an overview of most important States involved in enabling the opposition to pursue its fighting, i.e. Saudi Arabia, Qatar, Jordan, Libya, Sudan, and Croatia. Importantly, other States – amongst others USA, UK, Iraq and Turkey – have also played a crucial role and have facilitated the transfer of weapons from the above-mentioned States to the Syrian opposition.

297. See Youtube, Hezbollah leader acknowledges fighters presence in Syria, last consulted on 31 October 2013.
Saudi Arabia and Qatar have taken a lead in arming the Syrian opposition, with a sharp increase in weapon supplies in 2013.\footnote{303} To illustrate, in March 2013, the New York Times (NYT) reported more than 160 military cargo flights by Saudi, Qatari and Jordanian military-style cargo planes. SIPRI’s Hugh Griffiths, estimated the payloads of these flights at 3,500 tons of military material.\footnote{305} In an interview with NYT he also added that ‘the intensity and frequency of these flights [are] suggestive of a well-planned and coordinated clandestine military logistics operation’.\footnote{305} This military equipment was brought into Syria via Turkey and Jordan, where the planes landed.\footnote{306} Later reports, press articles and interviews with State officials confirm the organized character of weapons supplies – mostly small arms and light wepons, including AK-47 rifles, rocket propelled grenades, hand grenades\footnote{307} – by both States.\footnote{308} Given the large number of flights into Jordan, Turkey and later also Iraq, and subsequent transports over land into Syria, it is difficult to imagine that respective governments would not have been involved in one way or another.\footnote{309} Many weapons funnelled by Saudi Arabia, but also by Jordan, originated from Croatian stockpiles, part of an undeclared surplus of arms left over from the 1990s Balkan wars.\footnote{310} According to some officials cited in the media, ‘multiple planeloads’ with ‘thousands of rifles and hundreds of machine guns’ have left Croatia.\footnote{311} Agence France Presse refers to ‘some 75 civilian transport planes’ transporting ‘some 3,000 tons of weapons and ammunition’.\footnote{312} Importantly, several sources report that Washington and some European States played a role in organizing this traffic from Croatia to Syria.\footnote{313}

Great numbers of arms have been smuggled from Libya to opposition forces in Syria.\footnote{314} In June 2013, a NYT article reported that ‘many of the same people who chased the colonel [Qaddafi] to his grave are busy shuttling his former arms stockpiles to rebels in Syria’.\footnote{315} This news has been confirmed by various former Libyan rebels.\footnote{316} These arms flows have been qualified as ‘an important source of weapons for the uprising’ and as ‘an important multinational effort, financed largely by Qatar, to transport

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303. While Saudi Arabia reportedly sends arms mainly to opposition groups in southern Syria, Qatar mostly sends arms to rebels in the north. See on this issue, amongst others Reuters (2013), Qatar, allies tighten coordination of arms flows to Syria, 14 May 2013.


305. Ibid. See also New York Times (2013), In turnabout, Syria rebels get Libyan Weapons, 21 June 2013.


308. The National (2013), Gulf states put new conditions on arms supplies to Syrian rebels, 7 April 2013; BBC (2013), Who is supplying weapons to the warring sides in Syria, 14 June 2013.

309. In this regard, see also BBC (2013), ‘Who is supplying weapons to the warring sides in Syria’, 14 June 2013; N. Daisse and C. Puivein (2013), Qui, in.


316. Foreign Policy (2013), Comrades in Arms, 10 July 2013.
arms from Libya to Syria’s opposition fighters’.

The UN Panel of Experts on Libya observed in this regard that ‘‘the Syrian Arab Republic has presented a prominent destination for some Libyan fighters and Libyan military material’ and that ‘‘transfers have been organized under the supervision, or with the consent, of a range of actors in Libya and the Syrian Arab Republic and in countries neighbouring the Syrian Arab Republic’.

Weapons stockpiles have reportedly been supplied by boat and airplane, and have contained tons of humanitarian items and military material including; vehicles, heavy machine guns, rocket-propelled grenade launchers, mortars, ammunition and SAM-7 missiles. According to Foreign Policy, these Libyan surface-to-air systems have brought down several aircrafts belonging to the Syrian regime.

The Sunni communities in Iraq and Lebanon have reportedly supplied explosives, arms and ammunition to the Syrian opposition as well. However, it is doubtful that the official authorities of these two States – whose majorities are of a different faith than the Sunni Syrian opposition – played a role in the transfer of arms to the rebellion.

Conversely, Sudan is an entirely different story. In August 2013, the NYT reported that Syrian rebels ‘found a supplier in an unlikely source: Sudan, a country that has been under international arms embargoes’. According to Syrian rebels and Western officials, the government of Sudan sold Chinese and Sudanese arms – including anti-aircraft missiles and small-arms cartridges – to Qatar, which in turn arranged their transfer to the rebels.

According to numerous sources, from the second half of 2013, the United States’ CIA began delivering light machine guns and other small arms and light weapons and munitions to the Syrian opposition. The CIA has reportedly also arranged the supply of anti-tank weaponry such as rocket-propelled grenades through a third party, ‘presumably one of the Gulf countries’. While the USA has been delivering non-lethal material to the rebels for a longer time, it thus seems that this opposition ally...
finally decided to effectively provide them with lethal aid as well. The USA, as well as France and the UK, have always urged caution with regard to the transfer of arms to the splintered Syrian opposition, raising questions about the final destination of these arms, which could—as it is regularly reported—end up in the hands of extremist groups.

Europe has remained divided on the question of whether to provide lethal military support to the Syrian opposition. Several European States—among others Sweden, Belgium, and the Netherlands—have always opposed the transfer of arms to the armed opposition in Syria outside UN framework. They have stressed the risk that such transfers would undermine the conditions for a political process; that such transfers may trigger the escalation of violence in Syria and the entire region; that weapons may end up on the black market or in hands of terrorist groups and criminal gangs; and that these weapons may be inadequately used and stocked. Other criticism often heard is that the way to peace is not through arms deliveries, and that the transfer of lethal material would be illegal under international law. Yet, other States, including France and the UK—two countries that have long since been sending non-lethal military support to the opposition—have lobbied to drop the EU arms embargo, with success (see 3.1.2). However, after the lift of the EU arms embargo against Syria, the UK government decided to put the clock back, and stressed it had no plans to arm the Syrian opposition immediately.

Despite persistent contradictory rumours in the press, there is no evidence of UK lethal arms supplies to Syria. France, on the other hand, announced in mid-September that it was in favour of sending arms to the Free Syrian Army (FSA) but only ‘with a number of States and a framework which can be controlled’, in order to prevent that weapons end up with Islamists. Late October 2013 there is still no official declaration that French arms transfers effectively occurred. Still, it must be mentioned that several sources have reported French arm transports to Syria, even at a time when the arms embargo was not yet lifted.

327. Following the chemical attack(s) in Syria, US Congress approved the supply of weapons to the opposition, but until September 2013 there was no reported progress towards physically supplying the rebels. See CNN (2013), ‘Official says CIA-funded weapons have begun to reach Syrian rebels rebels deny receipt’, 12 September 2013; The Washington Post (2013), ‘Congressional panels approve arms aid to Syrian opposition’, 22 July 2013; BBC (2013), ‘US says it will give military aid to Syria rebels’, 14 June 2013.


6. ARMS TRANSFERS TO SYRIA: LEGALITY

This section examines the legality of arms transfers to both the Syrian State armed forces and opposition groups. The permissibility of arms transfers is analysed in view of the most important rules of both European law and public international law which apply to the supply of weapons and the use or threat of force. Bearing in mind the factual situation in Syria as well as the status, characteristics and behaviour of the different parties to the civil war, the purpose of this analysis is to provide a legal analysis on arms transfers to Syria.

6.1. EU Law

Within the EU context, several documents must be taken into account when a State considers exporting arms to irregular armed groups or official governments abroad. For several years now, the EU has played a key role when it comes to arms export control, both in regional and international context. This section looks at two EU key instruments which may limit the lawfulness of arms transfers to Syria.

6.1.1. Council Joint Action on Small Arms and Light Weapons

The Council Joint Action on the EU’s contribution to combating the destabilizing accumulation and spread of small arms and light weapons is a first important instrument which recognizes the devastating effects of uncontrolled proliferation of small arms and light weapons (SALW). It must be stressed that this EU instrument only considers the export of small arms and light weapons (which are listed and defined in the Council Joint Action’s Annex), and thus it excludes from its scope of application the export of other types of weapons.

In essence, one of the important principles articulated in this Council Joint Action is that EU Member States are committed ‘to supply small arms only to governments’. The Council Joint Action thus urges EU Member States not to export SALW to non-State actors. Since this Joint Action commits the EU Member States in the positions they adopt, and in the conduct of their activity, EU Member States should not transfer SALW to the armed opposition groups in Syria, except – of course – if they recognize the opposition movement as the new legitimate government of the Syria (and thus officially rejecting the Assad regime as the organ representing the Syrian State). Still, if an EU Member State considers arming the (newly recognized) government in Syria, it must also take account of other European and international rules that may legitimize or delegitimize such arms transfers, as explained in the next sections.

334. This Joint Action was adopted in 1998 and renewed in 2002. In this regard, see eas website.
335. Article 3 (b) 2002 Council Joint Action.
6.1.2. Council Common Position on Exports of Military Technology and Equipment

The 2008 Common Position Defining Common Rules Governing Control of Exports of Military Technology and Equipment articulates the EU export control standards. In effect, this binding document recognizes the responsibility of each EU Member State which exports military technology and equipment, and determines that States are to prevent the export thereof which might be used for internal repression or international aggression or contribute to regional instability. Therefore, each EU Member State is compelled to assess the export licence applications for items on the EU Common Military list against eight criteria, which can be summarized as follows:

1) Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations.
2) Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.
3) Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.
4) Preservation of regional peace, security and stability.
5) Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.
6) National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.
7) Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions.
8) Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.

Moreover, States are not only compelled to assess applications for physical exports against these eight criteria, but also applications for brokering licenses, transit or transhipment licenses, and applications for licenses for intangible transfers of software and technology.

Careful reading of the Common Position allows for the conclusion that an EU Member State is compelled not to export or to deny export licenses for military technology and equipment (see EU Common Military List) to Syria:

339. EU Common Position 2008/844/CFSP, indent 4. See in this regard also EUEA, last consulted on 1 November 2013.
341. Article 1.2 EU Common Position 2008/844/CFSP.
(1) if this would be inconsistent with its international obligations and commitments; \(^{342}\)
(2) if there is a clear risk that this military technology and equipment might be used for internal repression; \(^{343}\)
(3) if there is a clear risk that this military technology and equipment might be used for serious violations of international humanitarian law; \(^{344}\)
(4) if this would provoke or prolong armed conflicts or aggravate existing tensions or conflicts; \(^{345}\)
(5) if there is a clear risk that this would endanger regional peace, security and stability. \(^{346}\)

Even though the language of the 2008 Common Position is not very precise, the correct application of the rules of interpretation of the European Court of Justice allows for the conclusion that, in view of the actual situation in Syria as described above, EU Member States are not allowed to export weapons to either of the parties of the armed conflict in Syria. Legal interpretation at the Court of Justice is governed by the text, context, and purpose: ‘[t]hese are the three methods indicated early on in the Van Gend en Loos judgment by the reference to “the spirit, the general scheme and the wording” of the legal provisions which the Court has to interpret’. \(^{347}\) The exports to both the armed opposition and the Assad government would automatically activate all five risks articulated above, which the EU precisely wanted to avoid through the adoption of the obligatory Common Position, and is thus proscribed. Public international law, and the obligations it imposes upon States, confirms this conclusion as will become apparent in the analysis below.

6.2. Public International Law, International Human Rights Law and International Humanitarian Law

In addition to EU law, the legality of arms transfers to armed groups that are involved in armed conflict is also conditioned by international human rights law, international humanitarian law, and international law governing the use of force. Analysis of a State’s obligations under these different branches of international law allows for the conclusion that a State will, under certain circumstances, violate its international obligations if it transfers arms to both State and non-State actors that are involved in armed conflict abroad. Considering the ongoing armed conflict in Syria, and the actual and future arms flows, this section first assesses the risks for a State to incur international responsibility if abuses are committed with military equipment and technology transferred to Syria by foreign States.

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342. See Article 2.1 EU Common Position 2008/844/CFSP (‘shall be denied’).
343. Article 2.2(a) EU Common Position 2008/844/CFSP (‘deny’).
344. Article 2.2(c) EU Common Position 2008/844/CFSP (‘deny’).
345. Article 2.3 EU Common Position 2008/844/CFSP (‘shall deny’).
346. Article 2.4 EU Common Position 2008/844/CFSP (‘shall deny’).
347. M.P. Maduro (2007), ‘Interpreting European Law: Judicial Adjudication in a Context of Constitutional Pluralism’, European Journal of Legal Studies, at p.4; ECJ Case 26/62, Van Gend & Loos [1963], at p.1. On the rules of treaty interpretation see also Articles 31 to 33 of the Vienna Convention on the Law of Treaties (VCLT). According to Article 31 VCLT ‘[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose’. Article 31 of the Vienna Convention on the Law of Treaties forms part of the EU legal order (yet, the VCLT only governs primary legislation of the EU) as a rule of customary international law (or, by analogy, Case C-386/08 Brita [2010], par. 42 and Case C-466/11 Currá and Others [2012], par. 22).
This analysis will be based on (i) international human rights law, (ii) international humanitarian law, and (iii) the International Law Commission (ILC) Articles on State responsibility. Next, this section also examines if, and under what conditions, arms transfers may be contrary to the principles of non-intervention and non-use of force. This is because the international lawfulness of arms transfers depends not only on humanitarian law and human rights law but also on the international law governing the use of force and relations between States. Last, this section assesses whether the ‘Responsibility to Protect’ (R2P) argument, which has regularly been invoked by States to justify the use of force in third States that are involved in internal crises, could legitimize arms transfers to Syria.

6.2.1. International Humanitarian Law

A first question that arises is whether, and under what circumstances, international humanitarian law prohibits arms transfers to actors involved in an armed conflict. International humanitarian law in the first place articulates the rights and obligations of the parties to the conflict. Thus, if a State becomes directly involved in the Syrian armed conflict, it is by definition bound to respect any applicable international humanitarian law rules. Moreover, and this is important for the actual question of the legality of arms transfers, international humanitarian law also creates obligations for States which are not a party sensu stricto to the armed conflict.348 This means that a State, even though it is not directly involved in the armed conflict, is compelled to abide by international humanitarian law in its relations to the actors involved and/or affected by an armed conflict.349

This obligation of non-State parties to the conflict is clearly articulated in Article 1 Common to all Four Geneva Conventions which provides that ‘[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances’.350 This twofold obligation means (1) that a State has the negative duty to refrain from itself, i.e. through its State organs or State agents, violating the law of war, but also (2) that a State must abstain from aiding and assisting in the commission of violations of international humanitarian law.351 On that account, the International Court of Justice has observed that a State is under the obligation not to encourage persons or groups engaged in the conflict to act in violation of international humanitarian law.352 The ICJ also ruled that every State, ‘whether or not it is a party to a

350. It is important to stress that Common Article 1 is applicable to both international and non-international armed conflicts.
351. See in this regard D. Fleck (2008), at pp.631-632; J.M. Henekaerts and L. Dorward-Beck (2005), Customary International Humanitarian Law, Volume II, at pp.3289-3301. M.A. Babiker (2007), Application of International Humanitarian and Human Rights Law to the Armed Conflicts of the Sudan, Antwerp/Oxford, at p.227. It must be stressed that the obligation to ‘ensure respect’, besides requiring States to abstain from certain behaviour, also creates the positive obligation to react when confronted with abuses perpetrated abroad. However, this particular content of the obligation to ‘ensure respect’ will not be analysed here.
352. ICJ, Nicaragua Case, §§220, 255, 256.
specific conflict, is under the obligation not to render aid or assistance in maintaining an unlawful situation.

Thus, all States that do, or consider to, provide military support to either of the parties to the armed conflict in Syria must make sure that this assistance is not used for the commission of violations of international humanitarian law. Under international humanitarian law, it is prohibited to transfer arms or related material to both State and non-State armed groups which are notorious for committing war crimes and other violations of the law of war. If not, that State commits an internationally wrongful act that may trigger its international responsibility.

6.2.2. International Human Rights Law and ILC’s Articles on State Responsibility

Does international human rights law impose similar restrictions on the permissibility of arms transfers to actors involved in an armed conflict? The answer here is less straightforward, and requires the consideration of (1) the theory of the extraterritorial application of human rights treaties, and (2) the distinction between positive and negative human rights obligations.

6.2.2.1. Arms Transfers to State Armed Forces

The obligation to respect human rights and ILC’s Articles on State Responsibility – The tripartite typology of human rights obligations distinguishes between the obligation to respect, protect and fulfil human rights. The obligation to respect human rights means that States must abstain from destroying human rights and freedoms. This negative duty not to interfere with rights and freedoms exists both in a State’s own territory and outside the State’s territory. To illustrate, in an extraterritorial context the obligation to guarantee the right to liberty prohibits a State to send a State agent abroad to kidnap a person. Today, the prohibition of a State to itself perpetrate abuses abroad is widely acknowledged by both international practice and legal doctrine. Several States have been condemned for having intentionally killed persons in foreign States, or for having violated other human rights abroad. However, the more pressing question in this actual context is whether human rights law also prohibits the facilitation, contribution or support to human rights violations abroad, for example through the transfer of arms and other military material to the different actors on the ground.

353. ICJ, Wall Advisory Opinion, 9 July 2004, §158.
354. Ibid. §159.
355. Contrary to for example Article 16 ILC’s Articles on State Responsibility, Common Article 1 prohibits third States to support, aid or assist in the violations of international humanitarian law irrespective whether they are perpetrated by State or non-State actors. See also B. Kessler (2001), ‘The duty to ‘ensure respect’ under Common Article 1 of the Geneva Conventions: its implications on international and non-international armed conflicts’, GYIL, at pp.49-56.
356. This section only analyses the legality of aid and assistance to armed groups in light of civil and political rights. It leaves out of consideration the economic, social and cultural rights.
357. For an overview of the tripartite typology, see O. De Schutter (2010), International Human Rights Law, Cambridge University Press, at pp.264-256.
If a State knowingly aids or assists the government of another State in the commission of an internationally wrongful act (such as gross human rights violations and other international crimes) it may be internationally responsible. This is explicitly acknowledged by Article 16 of the ILC’s Articles on State responsibility. Thus, when Russia, China or Iran transfer weapons to the Syrian regime of Bashar al-Assad, knowing that these arms may be used for the commission of international crimes (such as massacre, torture, etc.), they may incur international responsibility.

### 6.2.2.2. Arms Transfers to Opposition Groups

Since Article 16 of the ILC’s Articles only concerns relations between States (government to government), a more complicated and controversial question that arises is whether there exists a similar responsibility when aid or assistance is provided to armed opposition groups. If so, on what legal basis can a State be held accountable if it transfers military equipment and technology to irregular armed groups? The State’s obligation to secure human rights and the principle of non-use of force and non-intervention are successively analysed in view of the legality of arms transfers to non-State armed groups in Syria.

The obligation to secure human rights – States are compelled not only to ‘respect’ human rights, but also to ‘ensure’ and ‘secure’ human rights recognized in international human rights treaties. This means that States, in addition to being obliged to refrain from certain behaviour, must also guarantee that human rights are respected and act accordingly. For example, the obligation to respect the right to life prohibits a State from assassinating its citizens, but it also compels States to stop, prosecute and punish a murderer. This obligation also necessarily prohibits the State from providing a weapon to an individual who would in all probability use it to kill someone.

It is undisputed that the facilitation or contribution to such abuse is the responsibility of the State if it is perpetrated within the territory or jurisdiction of the State party to the human rights treaties. However, it is controversial whether a State may be condemned solely on account of substantive human rights law if it only supports, influences, or facilitates human rights abuses by non-State actors in an extraterritorial context.

The jurisdictional provisions of most important treaties regarding civil and political rights contain explicit references to the territory and/or jurisdiction of the State party. In view of these jurisdictional provisions, the territorial application of these treaties has often been interpreted as preventing the expansive interpretation according to which, also in situations falling short of jurisdiction or control, a State would be compelled to refrain from facilitating human rights violations by other actors abroad.

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360. Article 16 ILC’s Articles.
361. Article 16 ILC’s Articles only concerns relations between States and is not applicable inasmuch as the aid or assistance concerns entities that have no international status. See for example ICJ, Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 26 February 2007, par. 420.
362. Article 16 ILC’s Articles.
364. Article 2.1 ICCPR; Article 1 ECHR; Article 1.1 ACHR.
Some legal authors have adopted a more ambitious approach, and argue that ‘any State’s activity that interferes or deprives people in other states of their human rights will constitute violations of the obligation to respect,’ but this is not the generally accepted position. In view of the law as it stands, it is doubtful whether States such as Saudi Arabia, Qatar, France, and the UK – if they supply arms to the rebels in Syria – can incur international responsibility on the basis of international human rights law. International courts, for the most part, have recourse to other obligations under international law when establishing that the transfer of arms and other support to armed groups in foreign States constituted wrongful conduct. Especially the principles of the non-use of force and the principle of non-intervention are of important value in assessing the legality of arms transfers abroad, which brings us to the next section.

6.2.3. The Principles of Non-Intervention and Non-Use of Force

The international lawfulness of arms transfers also depends on the international law governing the use of force and relations between States. Whereas international humanitarian law and human rights law determine the lawfulness of eventual arms transfers to Syria with respect to the Syrian citizens, international law on the use of force determines the lawfulness of arms transfers with respect to the Syrian territorial State. Article 2(4) of the UN Charter is the central rule on the prohibition of the threat or use of force in international relations and provides that ‘[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.’ In view of the situation in Syria, the question that arises is whether the principle of non-use of force limits the right of foreign States to arm the actors involved in the Syrian armed conflict.

6.2.3.1. Arms Transfers to Opposition Groups

Non-intervention and non-use of force – The case-law of the International Court of Justice is particularly instructive when analysing the principles of non-intervention and non-use of force, and the impact of both principles on the legality of arms transfers to actors involved in an armed conflict. In the Nicaragua case, the ICJ held the United States responsible for ‘training, arming, equipping, financing and supplying the contra forces [i.e. a paramilitary group which aimed at overthrowing the government of Nicaragua] or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua.’ These conducts, the Court concluded, constitute (1) a breach of the State’s obligation not to intervene in the affairs of another State, (2) a breach

366. See for example ICJ, Case concerning armed activities on the territory of the Congo (Congo v. Uganda) (hereafter: ‘Congo v. Uganda Case’), Judgment, 19 December 2005, §§181-221 and 345 (3). In this case, the ICJ rules that Uganda violated its human rights and humanitarian obligations because, amongst others, it had incited ethnic conflict and failed to take measures to end the conflict. However, the ICJ in its final considerations does not say that the support given to irregular forces constitutes a human rights violation.
369. ICJ, Nicaragua Case, §292.
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a State’s obligation *not to use force* against another State, and (3) a breach of the State’s obligation *not to violate the sovereignty* of another State. In the DRC v. Uganda case, the ICJ considered that Uganda, which had given military support to armed groups in Congo, had violated its international obligations. The Court’s wording is very clear in this regard, and worthy of being quoted: ‘the Republic of Uganda (…) by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention.’ This ICJ case-law is also echoed in various Security Council resolutions urging States to cease providing financial, military, intelligence and non-military assistance to non-State actors abroad, for this would destabilize States and threaten (internal and/or regional/international) peace, security and stability. Is sum, as they stand, the commanding principles of the non-use of force and non-intervention do not permit the transfer of military equipment and technology to armed opposition groups in Syria.

6.2.3.2. Arms Transfers to State Armed Forces

Since the above case-law and practice only concern military and other support provided to non-State actors, the remaining question to be answered is whether such support, if provided to State actors (i.e. the government), also constitutes a violation of the principles of non-intervention and non-use of force. This is an important issue in the Syrian context; first, because various States (Russia, Iran, etc.) provide military support to the Assad government, and second, because States may recognize (France, UK, etc.), or already have recognized (Libya), the Syrian opposition as the legitimate and only government of the Syrian State.

*Intervention by invitation or with the consent of the government* – Under international law, the government of a State has the right to request assistance from other States to preserve internal law and order or to defend its borders from outside armed attack. For these two purposes, a State can validly consent to a foreign military presence on its territory, or allow this foreign State to use force or to send military material and technology. However, such intervention based on the invitation or consent of the government of a State is allowable only if certain conditions are observed.

In order to be considered lawful, arms transfers to the Syrian government must therefore fulfil the following criteria, at least if the arms suppliers base these transfers

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570. Ibid.
571. ICJ, *Congo v. Uganda Case*, §345 (1).
572. See for example, UNSC Res. 1907, S/RES/1907, 23 December 2009; UNSC Res. 1844, S/RES/1844, 20 November 2009; UNSC Res. 2023, S/RES/2023, 5 December 2011. These resolutions condemned the financial, military, intelligence and non-military assistance to armed groups as both a violation of the arms embargo and a threat to peace, security and security.
573. See Section 3.2.2.
574. See UNSC Res. 387, S/RES/387, 31 March 1976 which stipulates that it is ‘the inherent and lawful right of every State, in the exercise of its sovereignty, to request assistance from any other State or group of States’; ICJ, *Nicaragua Case*, §246 (intervention is ‘allowable at the request of the government of a State’); ICJ, *Congo v. Uganda Case*, §§42 and 53.
on the theory of ‘intervention by invitation or with the consent of the government’.  

First, the request must be made, or the consent for an intervention, must be given _ad hoc_ or in advance to the arms transfers. Second, consent must be given freely to the intervening State and must not be the product of hidden influence or pressure by the State which provides arms or other support to the government. Third, the request for the intervention is to be made by the _lawful government_ of the State. This means that this government ‘is still representing the population and has not yet lost effective control over the territory’.  

This is a factual matter which needs to be decided in light of the particular evidence of the situation in a State; however, _in view of the civil war in Syria the least one can say is that the Assad regime as much as, obviously, the Syrian opposition, no longer represents part of the population and has lost control over part of the territory._ This brings us to the principle of non-intervention in a civil war.

**Principle of non-intervention in a civil war** – When local unrest reaches the threshold of a civil war, third States are prohibited from intervening in favour of one party or another, even upon request of the internationally recognized government. This duty of non-intervention reflects an inherent right of self-determination through revolution: when there is an internal armed conflict, third States must abstain from any interference because ‘in situations of a closely contested civil war, foreign nations cannot guarantee which regime reflects the will of the people’. In sum, when internal armed opposition challenges the government’s control over the State, the presumption that the government speaks for the State may become untenable.  

This means that, in principle, the Assad regime cannot legally invite foreign States to assist it in repressing the Syrian opposition. Foreign States can therefore neither send troops nor transfer arms or military equipment in support of the Assad regime.

**Intervention in response to prior foreign intervention** – There is, however, an exception to the rule prohibiting intervention in internal armed conflicts. When an attack from internal armed groups against the government receives assistance from foreign forces, other States may assist the government if it requests so. In other words, the Assad regime can

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378. Ibid. at p.6.  
380. The prohibition of forcible intervention in civil conflict is explicitly referred to in some legal rules that are accepted to be declaratory of customary law and can thus not be set aside on the grounds of a request or consent thereto by the government of the territorial State. On this issue, see amongst others ICJ, _Nicaragua Case_, 5191 and _ICJ, Congo v. Uganda Case_, §162. See also C. Gray (2008), at p.68.  
only lawfully be assisted by a third State to repress the Syrian opposition, if this opposition previously received substantive assistance from foreign forces. This, of course, raises the difficult question of which States were the first to send weapons to Syria; the States supporting the Assad regime or the States supporting the Syrian opposition? This study makes no claim to having a definitive answer to this question. However, this study would like to stress that if the arms suppliers base these transfers on the theory of ‘intervention in response to prior foreign intervention’, they are still compelled to end all arms transfers if they know, or should have known, that these arms may used for the commission of international crimes.384

6.2.4. Self-Defense, Security Council Authorization and the Responsibility to Protect

Under international law, there are several circumstances under which the use of force, including the transfer of military material and/or the sending of troops, becomes lawful. This section briefly analyses the concepts of self-defense and Security Council authorization, and concludes with examining whether the concept of ‘responsibility to protect’ could legitimize arms transfers to Syria.

Self-defense and Security Council authorization – A Security Council authorization385 and a situation of self-defense386 are justifications recognized in international law for intervention within the sphere of sovereignty of another State. Thus, if the Security Council authorizes this, the transfer of military equipment and technology to the Syrian opposition or the Syrian government (depending on the wording of the Security Council Resolution) may become lawful. Likewise, an armed attack387 by Syria may justify the use of force, including through the transfer of arms, against Syria by the attacked State.388

Humanitarian Intervention and Responsibility to Protect – The term ‘humanitarian intervention’ covers the use of military force by a State, or a group of States, into another State without that State’s consent and primarily for halting or preventing gross human suffering.389 Several States have on various occasions argued that on the basis of the concept of ‘humanitarian intervention’ or ‘Responsibility to Protect’ (R2P), both a military action in Syria and arms transfers to the Syrian opposition were necessary, legal, and legitimate, – even without UN Security Council approval.390 Especially after the attack with chemical weapons, the Western dilemma about intervention in Syria deepened.391 The United States and several of its allies drew up plans for a military

384. See Sections 6.2.1 and 6.2.2.
385. See Chapter VII UN Charter.
386. Article 51 UN Charter.
387. This armed attack must fulfill various conditions if it is to justify use of force. See in this regard P. Kunig, Op.cit, at p.6.
388. This use of force is admissible only if it responds to certain conditions, such as the principle of proportionality.
391. See The Guardian (2013), [Does the UN’s Responsibility to Protect necessitate an intervention in Syria], 28 August 2013.
action on the Syrian territory and declared that the Syrian opposition had to be armed properly and immediately. The question that thus arises is whether the use of chemical weapons, or the large-scale abuses of both international humanitarian and human rights law, provide grounds for exceptionally legitimizing such intervention in Syria which is not authorized by the UN Security Council (hereafter referred to as ‘unauthorized humanitarian intervention, as opposed to UN authorized interventions). The doctrine of humanitarian intervention, as well as the R2P-concept, require a differentiation between legality on the one hand, and legitimacy on the other.

When assessing the legality of an unauthorized humanitarian intervention in Syria, it must be noted, first, that there exists no legal instrument that plainly authorizes military intervention for humanitarian purposes. Much to the contrary, legal texts are often quoted as evidence for a prohibition of such forcible intervention. The UN Charter, to which we have referred above, only articulates two exceptions to the prohibition of the use of force, and humanitarian intervention is not one of them. The principle of non-intervention enshrined in the UN Charter has been reaffirmed in later resolutions and declarations of the United Nations, often referred to as further evidence prohibiting humanitarian intervention. Summarized, international legal instruments reveal a strong reluctance when it comes to forcible interventions for humanitarian purposes.

Analysis of international practice discloses no unequivocal answer as to the legality of humanitarian intervention either. Unauthorized humanitarian intervention, it is argued, ‘has been controversial both, when it happens and when it has failed to happen’. However, a close analysis of the most important cases of unauthorized humanitarian interventions of the recent past – such as in Iraq (1991) and Kosovo (1999) – allow for the conclusion that the vast majority of these interventions have been controversial and their legality disputed. Similarly, the argument of the US and several European States that there was a legal right to use military means in Syria to stop the atrocities was rejected by the majority of governments and legal experts worldwide.

392. See Sections 3.1 and 5.2.
393. For an analysis of the legitimacy issue, see Section 7.
396. For example, the UNGA Inadmissibility Declaration (1965) stipulates that ‘[n]o State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State (…)’; The UN GA’s Friendly Relations Declaration (1970) prohibits forcible intervention and makes no exception as to military intervention for humanitarian purposes; The UNGA’s Definition on aggression (1974) provides that ‘no consideration of whatever nature, whatever political, economic, military or otherwise, may serve as a justification for aggression’.
The doctrine of the ‘Responsibility to Protect’ (R2P) does not change this conclusion. The core idea behind R2P can be explained as follows: each individual State is primarily responsible for the protection of its population, but if the home State is unable or unwilling to care for its people the onus of protection falls upon other actors. The R2P concept was designed ‘to enable the international community overcome the dilemma between the imperative to act in situations of mass atrocity and the need to respect the conventional norm of non-interference’ and encapsulates the idea that sovereignty must not protect States that lack the will or capacity to protect their people. However, the R2P concept as endorsed by the General Assembly in 2005, first, does not primarily focus on military responses to grave humanitarian problems. Moreover, it allows no opening for coercive measures unless they are authorized by the Security Council. Summarized, the law as it stands does not allow a conclusion that an unauthorized military intervention or the sending of arms to Syria for humanitarian purposes passes the legality test.

404. Ibid.
405. Ibid.
7. Concluding observations

The detailed analysis of both the actual situation on the ground in Syria and the most important European and international legal rules regulating the transfer of arms and the use of force in international relations disclose that the legality and the legitimacy of arms transfers to Syria may be fallacious.

In order to be internationally lawful, the transfer of military material and technology to Syria must be justified with respect to both the territorial State and the affected persons.

First, regarding the \textit{territorial State}, international law on the use of force severely limits the possibility for foreign States to transfer arms to Syria lawfully. In essence, all arms transfers to the armed opposition groups would be unlawful; and arms transfers to the government are lawful only if that government still represents the Syrian people and controls the Syrian territory, \textit{quod non}.

Second, regarding the \textit{Syrian citizens} who are the primary victims of the armed conflict in Syria, arms transfers to Syria are lawful only if these transfers do not harm their rights under international humanitarian law and international human rights law applicable during armed conflicts. Analysis of the situation on the ground has revealed the clear risk that arms in Syria – be they in the hands of the Assad regime or in the hands of the opposition forces – may be used for the perpetration of human rights and humanitarian law violations, which again casts a shadow over the legality of arms transfers to Syria.

Third, it is erroneous to invoke the doctrines of ‘humanitarian intervention’ and ‘responsibility to protect’ as a legal justification for either targeted strikes on the Syrian territory or arms transfers to the different Syrian parties.

If one moves away from the \textit{legal} considerations and comes into the sphere of the \textit{moral} and/or political considerations, the question arises whether sending arms to Syria and/or a military intervention in Syria can be \textit{legitimate}. Several experts and expert bodies such as ICISS have elaborated some strict criteria which must be satisfied for such unauthorized humanitarian intervention to be ‘legitimate’ and ‘wise’,\textsuperscript{406} such as: (a) seriousness of threat; (b) proper purpose; (c) last resort; (d) proportional means; and (e) balance of consequences.\textsuperscript{407} These criteria are indeed the absolute minimum for a humanitarian intervention or the transfer of arms to be legitimate. But still, one must remain very sceptical regarding claims that arms transfers ought to protect civilians. This is because the unintended consequences, including further civilian casualties, tend to be severe.\textsuperscript{408}

\textsuperscript{406} G. Evans (2013), \textit{R2P down but not out after Libya and Syria}, Open Democracy, 9 September 2013.


\textsuperscript{408} J. Holmes (2013), ‘Does the UN’s Responsibility to Protect necessitate an intervention in Syria?’, \textit{The Guardian}, 28 August 2013.
provoke, important arms transfers to Syria in the name of ‘the responsibility to protect’ involves additional important risks, such as (a) a deficient stockpile management by the recipients of the weapons; (b) an illicit proliferation and diversion of the arms inside and outside Syria; (c) an increased level of violence and increased violations of most basic rules of international law; (d) an arms race between the supporters and opponents of the Assad regime; (e) a militarization of the armed conflict; and (f) placing into jeopardy the regional and international peace and security.

To conclude, this report would like to underline the following important statement by the authoritative Independent International Commission of Inquiry on the Syrian Arab Republic: ‘There is no military solution to this conflict. Those who supply arms create but an illusion of victory’.409

ARMS TRANSFERS TO
THE SYRIAN ARAB REPUBLIC
PRACTICE AND LEGALITY

After more than two years of internal conflict in Syria, a pressing
question relates to the practice and legality of arms transfers to both
the groups opposing the regime of Assad and the Assad regime itself.
Since the beginning of the conflict, regional and international players
are arming one side or the other, which brought the UN Secretary-
General to qualify the conflict as a ‘proxy war’. In light of the lift of
the EU arms embargo earlier this year, and the growing tensions at
the regional and international level on the Syria question, there is
no likelihood of decreasing arms transfers in the near future, which
triggers the discussion on the permissibility of such arms transfers.

Therefore, this research paper outlines the normative and practical
framework which governs arms transfers to the myriad of actors
involved in the Syrian armed conflict. The practical analysis
concentrates on past and present arms transfers to Syria and the risks
of proliferation of these arms in Syria and beyond. The legal analysis
focuses on the most important international and European legal
standards governing the transfer of military material and technology,
as well as the international treaty and customary law rules regulating
the threat or use of force in international relations. The main purpose
of this report is to offer an in-depth legal and factual analysis on arms
transfers to Syria.

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